NON-MUSLIMS IN THE EARLY ISLAMIC EMPIRE
FROM SURRENDER TO COEXISTENCE

MILKA LEVY-RUBIN

Non-Muslims in the Early Islamic Empire

The Muslim conquest of the East in the seventh century entailed the subjugation of Christians, Jews, Zoroastrians, and others. Although much has been written about the status of non-Muslims in the Islamic empire, no previous works have examined how the rules applying to minorities were formulated. Milka Levy-Rubin's remarkable book traces the emergence of these regulations from the first surrender agreements in the immediate aftermath of conquest to the formation of the canonic document called the Pact of ʿUmar, which was formalized under the early ʿAbbāsids in the first half of the ninth century. What the study reveals is that the conquered peoples themselves played a major role in the creation of these policies, and that these were based on long-standing traditions, customs, and institutions from earlier pre-Islamic cultures that originated in the worlds of both the conquerors and the conquered. In its connections to Roman, Byzantine, and Sasanian traditions, the book will appeal to historians of Europe as well as Arabia and Persia.

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Cambridge Studies in Islamic Civilization

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The Hebrew University of Jerusalem
and the National Library of Israel

In memory of my father

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Preface

As many do, this book started from an article. Actually, before that, it started, as many new ideas do, in the classroom, in a course on non-Muslims under Muslim rule in the first centuries of Islam. In the beginning it seemed as if when tackling the question of the status of *ahl al-dhimma* I would be treading a path that had been trodden by many before me. Using the fruits of former studies, I was therefore quite sure that I was covering ground that was new for students, but not otherwise.

It was while reading and re-reading the sources and bibliography that I discovered that there are still questions that are unasked and unanswered, and there are new avenues of research to follow. I discovered that though there was ample work on the subject of *Shurūṭ ʿUmar* and the status of the *dhimmī*s, it still did not provide an answer to one main question: how and why had these 'Conditions of ʿUmar' come about? In other words, what was their *Sitz im Leben*, what was their main purpose, and what were their sources of inspiration? I was especially interested in the question of intercultural exchanges that may have played a part throughout the process of their formation. That is, what were the cultural traditions that stood at the basis of this development? Were they mostly Muslim, as had usually been presumed, or did traditions and institutions of the conquered populations have a meaningful part in this as well?

Having first tackled the question of the immediate circumstances in which the document of the *Shurūṭ* was formed (Chapter 2), I was drawn to try and trace the process that took place between the time in which the small Muslim minority had taken over huge territories with millions of inhabitants which had formerly been under Byzantine and Sasanian rule,

and the moment in which a new comprehensive set of rules relating to this new population had been established.

Upon entering new and untrodden ground, I found myself in need of much information and advice. Many scholars generously shared their erudition with me, and I therefore owe great thanks to many who assisted me throughout this long journey.

I have a great debt to Amikam Elad, who has been guiding and supporting me in my work for many years, and has read the drafts of several chapters in this book and commented upon them with meticulous care.

I benefited greatly from the comments and suggestions of many scholars who were generous enough to invest their time in reading various versions of the manuscript. I owe much to Patricia Crone, who read the complete manuscript from cover to cover and commented on it page after page – originally anonymously, but who has since consented to be identified. Her wise comments and suggestions have greatly improved the final product.

Several people read the last chapter, which centres mostly upon Sasanian history and culture and provided me with important insights and comments. First of these is Zeev Rubin, who gave me much advice and support while writing this chapter. It saddens me greatly that this great scholar, who was always pushing the boundaries of knowledge, relentlessly studying a myriad of cultures and languages, is no longer with us. I also owe many thanks to Shaul Shaked and to Jamsheed Choksy, who were kind enough to devote time to read and comment on this chapter. They all assisted me in establishing a stronger basis on issues related to Iranian culture and society.

Mark Cohen was kind enough to read the whole manuscript, commented upon it, and shared his thoughts with me. I would also like to thank Robert Hoyland, with whom I had enlightening conversations on various issues during his stay in Jerusalem in the past year; he also read several chapters and provided me with important insights. Julia Rubanovich and Vera Moreen kindly assisted me in the translation of the Persian. Yohanan Friedmann patiently assisted me with several matters. Ruth Jacoby generously shared with me the cover illustration which she and David Yerushalmi found while researching Jewish apparel in Persian society. Finally, I would like to thank all of those who made the production of this book possible: the people from Cambridge University Press, including Marigold Acland, Mary Starkey and Helen Wheeler, and Leigh Chapman here in Jerusalem, who toiled over the index and the proofs. It

was a real pleasure to work with them, and I thank them all. Needless to say – errors remain mine alone.

I also owe many thanks to the Center for Advanced Judaic Studies of the University of Pennsylvania, where I was a member of a research group in 2006–7, and to its director, David Rudermann, for giving me a year free of cares. It was during this year that a major part of this book was written.

My greatest debt is to my father, Moshe Weinfeld, a great scholar of the Bible and the ancient Near East, who shared with me his great curiosity, his love of knowledge, and, most importantly, his endless pursuit of historical and cultural ties and contacts, and provided me with a rich and complex view of the ancient world. He passed away in April 2009, and I am greatly sorrowed by the fact that he is not here with me to see this book published.

I want to express my love and gratitude to Buni, my husband and partner, my constant companion, who was always there listening patiently to my thoughts and my doubts, shared with me his insights and advice, and supported me all the way to the finish line.

Introduction

The seventh century in the East was a time of major turbulence and upheavals which culminated in the Muslim conquest and dominion over what had been Sasanian Iran as well as over a significant part of the Byzantine empire. When the Muslims gained their first major victories over the Byzantine forces in the fourth decade of the seventh century CE, and when in the next few decades they overtook large parts of the ancient Near East, they were but a small minority among a large and heterogeneous population, made up of various ancient peoples, ethnicities, cultures, and religions. The encounter between the new, and not yet fully formed, Muslim religion and society and these ancient societies and cultures was a momentous event for both the conquerors and the conquered, as is well attested by the contemporary sources that have survived.[1] It raised hopes of freedom and change in some of the conquered peoples, including the Jews, the Samaritans, and the Monophysites, and generated great fear and awe in others.

While the immediate effects of the conquest seem to have been mild, according to the accepted views nowadays,[2] and allowed life in the conquered territories to take its course, its long-lasting effects were far-reaching.

This book proposes to investigate the emergence of the regulation of the status of non-Muslims under Muslim rule beginning with the initial agreements signed at the time of the conquest and continuing into the seventh to ninth centuries, a period in which the relationship between the Muslim rulers and the numerous populations of conquered peoples was formed. It was during this latter period that endeavours were made to create a consistent policy regarding the conquered population, and the

document of *Shurūṭ ʿUmar*, which was to become canonic, was drawn up. The book thus tries to track both the immediate initial stages and the *longue durée* processes that stood behind the formation of the status of non-Muslims under Muslim rule for many centuries to come. Unlike former works on the subject, this research focuses on the *origins* and on the *process* of the formation of the status rather than on the established fixed status. Moreover, it attempts to do so from an interdisciplinary viewpoint, integrating long-standing traditions, customs, and concepts originating in the worlds of both the conquerors and the conquered.

HISTORY OF RESEARCH

The policy adopted by the conquering Muslims towards the huge and heterogeneous population that they now dominated has attracted the attention of many scholars of Islam. Research of this field has concentrated first and foremost on the examination of the canonical document called *Shūrūṭ ʿUmar*, i.e. 'the Conditions of ʿUmar' (also called 'the Pact of ʿUmar', or 'the Petition to ʿUmar')[3] which defines the relationship between the Muslim conquerors and the non-Muslim population and delineates the status of the latter in Muslim society. The ʿUmar implied is traditionally believed to be the mythological caliph and conqueror ʿUmar b. al-Khaṭṭāb (r. 13–23/634–44).

This document has been discussed again and again in many different scholarly works for a long time,[4] and there has been a continuous debate over its date and its *Sitz im Leben*. For several reasons,[5] the most obvious being that the document reflects a state of established Muslim rule and of the close coexistence of Muslims and non-Muslims, the majority of scholars who referred to this document believed that, in its present form, it was not a product of the days of the conquest itself, as its title implies, and as Muslim tradition claims. Other arguments include its unresolved inconsistency with reports regarding the early surrender agreements, and its irrational petition format, in which the conquered ask of their own initiative that such a series of restrictions be imposed upon them. Rather, it was *justifiably* assumed that the existing document was a product of a later period, and was formulated by the Muslims some time during the eighth or ninth century. It is thus considered by most scholars a pseudo-epigraphic document which was attributed to the mythological caliph and conqueror.[6]

It should be emphasized, however, that the probable date suggested by most scholars, the eighth–ninth century, is nevertheless a comparatively

early date as regards Muslim law. This makes this document (as well as other parallel documents of its time) especially important when attempting to trace the formation of the status of non-Muslims.

Research regarding the status of non-Muslims as reflected in *Shurūṭ ʿUmar* treated a variety of issues. The most renowned works, written by Arthur S. Tritton and Antoine Fattal, provided an extensive survey of the status of non-Muslims under Muslim rule in the document and in Muslim legal literature, and reviewed its implementation through the ages. Regarding the circumstances of its composition, Tritton, followed by Fattal, believed that given the above considerations, the document must have been drawn up as 'an exercise in the schools of law to draw up pattern treaties'.[7] Alternatively, Albrecht Noth and Mark Cohen argued that it was the product of an ongoing process which incorporated early elements from the time of the conquest, especially those regarding the security of the conquering minority, with new elements which reflected the reality of later times.[8]

Cohen also raised the question of the form of the document, questioning the implausible idea that the non-Muslims actually came asking their Muslim rulers for such conditions as are listed in the document; he concluded that 'the Pact of ʿUmar may be seen as an outgrowth of the conquest treaties (Noth's view) but transformed into the mold of a petition'.[9] In this work Cohen also enriched the discussion by adducing early and previously unknown versions of the *Shurūṭ*.[10] Noth raised several issues,[11] one of which was the purpose of the *Shurūṭ*. He asked specifically whether its purpose was, in fact, to humiliate the non-Muslims. Based on an exhaustive analysis of the document itself, he concluded that the document's intention was not in fact to humiliate, but rather to differentiate between Muslims and non-Muslims. He reasoned that the fact that the Muslim conquerors were but a small minority among the conquered population caused a need for a means of differentiation between the two groups. This view relied necessarily on his claim that although the existing document was composed at a later time, it nevertheless reflects the conditions of the conquest rather than those of later periods and circumstances.

Daniel E. Miller raised the question of the date of the canonization of the document. In his Ph.D. thesis he followed the various versions of the petition to ʿUmar, sorted them out according to the various legal traditions, and traced the development of the document from its nascent stages to its canonization. Although Miller believes that the document goes back in its embryonic stages to the second century of Islam, he

nevertheless claims that it became central only during the fourth century of Islam, and believes that it became the normative document only in the seventh.[12]

Until now research has thus focused on various aspects of the status of non-Muslims under Muslim rule in its early stages, mainly on the canonic text of the *Shurūṭ*, and on Muslim *ḥadīth* and legal literature. In addition, historiographic, religious, polemic, and other materials which originated in the non-Muslim sources of Islamicate society were employed mostly in order to examine the actual implementation of the restrictions.

An additional subject which attracted less attention was the initial surrender agreements.[13] These were examined separately from the *Shurūṭ*, and their veracity has often been questioned. In addition, although some scholars raised the question of the incompatibility of these agreements with the *Shurūṭ*, there has been no serious attempt until now to try and trace the process of transition from the agreements to the canonical text of the *Shurūṭ*. Additionally, both the surrender agreements and the *Shurūṭ* have been examined mainly through Muslim sources or sources emanating from Islamicate society.

Goals of the Present Research

Unlike previous works, which focus mainly on the final product, i.e. the *Shurūṭ*, its implications and interpretations within Islamicate society, this book endeavours to look for its roots and origins, searching for these not only in the Arabian and Muslim world, but in the ancient cultures and civilizations of the conquered lands and peoples as well. The key working assumption is that the Muslims did not devise the principles that lay at the basis of the surrender agreements and *Shurūṭ ʿUmar ex nihilo*. The agreements, if indeed genuine, as I endeavour to demonstrate, must have relied on some existing model. Similarly, *Shurūṭ ʿUmar*, which gradually replaced the surrender agreements, and purporting to be a comprehensive surrender agreement, did not emerge *deus ex machina*; rather, it was conceived in a long and complex process, and must have been inspired by some former patterns and concepts that guided its creation. These may have originated in the Arab society most familiar to the Muslim conquerors, but may have also stemmed from the ancient societies of the conquered peoples, including Hellenistic–Roman–Byzantine culture, and Iranian society and culture. Verification or negation of this approach in the case of the initial surrender agreements or the *Shurūṭ* naturally entails an examination of the sources representing these cultures which were

dominant in the area prior to the arrival of the Muslims as well, and thus requires research more interdisciplinary in its nature.

In this respect, this research joins a growing group of scholars who assume that the development of Muslim society can be better understood in its wider historical context, rather than as a world apart. In the last decades attention has been drawn to the significant contribution of non-Muslim sources to the understanding of Muslim history in general, and to the wide use of non-Muslim sources, including Greek, Syriac, Persian, Jewish and other sources contemporary with the period of the conquest in particular. This innovative course of research was led by Patricia Crone and Michael Cook in their revolutionizing book *Hagarism*,[14] and was later followed by Michael Morony,[15] Lawrence Conrad,[16] Robert Hoyland,[17] Chase Robinson,[18] and others.

The present book attempts to use not only contemporaneous evidence originating in sources other than Muslim ones in order to understand the transition period, but earlier sources as well. Hence, source material relating to periods preceding the conquest is employed, in an endeavour to delve into the history, traditions, and culture of the conquered societies in order to gain new insights regarding the concepts that shaped the status of the non-Muslims in Islamicate society.

Using these varied sources originating in the various cultures that preceded the Muslim conquest, the book aims to draw a continuous full-length picture of the process of the formation of the relationship between the conqueror and the conquered from the first encounters and initial surrender agreements particular to each city or region, through the preliminary endeavours to create a consistent policy regarding the conquered population, the acceptance of *Shurūṭ ʿUmar*, and, at the end, the question of its actual enforcement from the ninth to the eleventh centuries.

The Structure of the Book

The opening chapter examines the agreements made between the surrendering cities and their Muslim conquerors. As noted above, these have been examined separately before, their authenticity was often doubted, and their content was considered solely in view of the Muslim sources. This chapter endeavours to prove that the agreements were in fact an authentic product of the interaction between the conquerors and the conquered, and that they reflected, to a great extent, an ancient heritage of the conquered societies regarding the customs, the procedures, and the documents that were part and parcel of surrendering.

The process of the transition from multiple and inconsistent agreements to the creation of one general set of rules to be imposed upon all non-Muslim populations is dealt with in the second chapter. I propose here that this process involved an internal discussion within the Muslim world over the continuing validity of the surrender agreements, and over various proposed alternatives of such a uniform document. While it is shown that the Muslims accepted the traditionally sacrosanct character of these documents, it is argued that the need for a uniform and accepted policy regarding the non-Muslims living under Muslim rule became urgent, and overcame the inhibitions and reservations. The discussion regarding the various alternatives ended, in its turn, in the complete victory of *Shurūṭ ʿUmar* over its competitors.

The third chapter tackles the question of ʿUmar II's role in the process. It attempts to reinforce a long-standing thesis, already raised by Tritton and Fattal, that the basis of the *Shurūṭ* was laid by ʿUmar II b. ʿAbd al-ʿAzīz (r. 99–101/717–20) by showing that that the principle of the *ghiyār*, i.e. the differentiating signs between Muslims and non-Muslims via dress, appearance, and public behaviour, which forms the main part of the *Shurūṭ*, was part and parcel of the ideology of the exaltation of Islam which was widely promoted by ʿUmar b. ʿAbd al-ʿAzīz.

The fourth chapter of the book contributes to the long-standing discussion regarding the actual enforcement of *Shurūṭ ʿUmar*. I attempt to show here that in contrast to the generally accepted notion that until the twelfth century the *Shurūṭ* were enforced only sporadically, Muslim rulers from the ninth century onwards in Egypt and Syria often attempted to enforce the *Shurūṭ* with varying degrees of success throughout the caliphate.

Although last, the fifth chapter is central to the thesis of the book. This chapter, entitled 'The provenance of the modes of subordination of non-Muslims', aims to trace the origins of the various clauses that make up the *Shurūṭ*. A large part of the chapter is dedicated to the origins of the *ghiyār*, in attempt to understand what ends they were meant to achieve. The main thesis in this chapter is that most of the restrictions originated in rules and customs that were prevalent in Byzantine and Sasanian societies. There is, however, a significant difference between these two sources: the restrictions originating in the Byzantine empire revert mainly to Byzantine law regarding Jews in the empire, a clear and straightforward transfer of a code regarding members of a dominated religion. However, the rules originating in the Sasanian realm, mainly those regarding *ghiyār*, revert to the ideal of the Sasanian class system, which was promoted in

Iran by the Sasanian aristocracy, and demanded that an external set of signs – including dress, paraphernalia, and public customs – distinguish between the elites and the commoners. This Sasanian ideal of an immobile hierarchic society, where each estate is clearly discernible through its dress and paraphernalia, was adopted – and in fact appropriated – by the Muslims in order to distinguish between Muslims and non-Muslims, as a way of establishing their own superiority.

I cannot end this introduction without making the following statement: my work is purely academic; at no stage of this research was there any intention that it should serve any political ends.[19] I am aware of course that its results, especially those in Chapter 4 and Chapter 5, may be used by some to support claims of an 'inherent policy of humiliation towards non-Muslims in Islam' – a claim that should immediately be rejected. My opinion is that one cannot compare the ancient and medieval climate regarding social status and hierarchy with the views of the modern world. In ancient and medieval societies social hierarchy, as well as discrimination between various groups, was accepted, and was almost self-evident. (This is true, by the way, even for democratic Athens, where women, *metoikoi*, and slaves, who together made up the major part of Athenian society, did not have the same rights as the Athenian citizens and were socially inferior.) None of these societies believed in equality or equal rights the way modern Western societies do. I therefore believe that judgement of these societies according to our values is anachronistic and useless. There is no sense in trying to attach these views and concepts blindly to contemporaneous Islam, which just like any other religious or political group is made up of diverse views and notions. In sum, in my opinion historians should remain loyal to their sources and to their academic disciplines, and the results of their research should remain as detached as they could possibly be from any current political or social debates and controversies.

1

The Roots and Authenticity of the Surrender Agreements in the Seventh Century

The early surrender agreements made between the Muslim conquerors and the non-Muslim inhabitants of the conquered cities are a common feature throughout early Muslim historiographic and legal literature. Surrender agreements are often mentioned, and at times cited in full, by al-Balādhurī, al-Ṭabarī, al-Yaʿqūbī, Ibn Aʿtham al-Kūfī, Ibn ʿAbd al-Ḥakam, Abū Yūsuf, Abū ʿUbayd, and Yaḥyā b. Ādam; they are also mentioned sporadically in many other compositions.

These agreements have been studied by various important scholars, from numerous points of view.[1] The main claim against the authenticity of the surrender agreements lies in the fact that some of the agreements cited by Muslim authors are detailed and comparatively long documents. They include not only general conditions concerning payment or taxation on the side of the conquered and the obligation of protection of people, property, and prayer-houses, but in fact many intricate details regarding arrangements concerning public matters as well as people's rights and property. The agreements are written, witnessed, and signed – usually by the commander of the Muslim army – and at times are reported to have been sealed. They seem to be too complex and versatile for conquerors who had recently emerged from the desert and were not yet sure of their position in regard to the conquered population. Thus Fattal believes that the early agreements were rather succinct and undetailed. According to this view, some of these agreements were made verbally, and it is doubtful whether many of them were in fact written down at the time of the conquest.[2]

The existence of the famous treaty between Nubia and ʿAmr b. al-ʿĀṣ' successor, ʿAbdallāh b. Abī Saʿd b. Abī Sarḥ, concluded in 652 and known

as the *baqṭ*,[3] has been doubted by several scholars. Peter M. Holt claims that 'the treaty, almost certainly legendary, represents an attempt to retroject conventions of Muslim–Nubian relations which had developed by the 4/10th century'.[4] Michael Brett too claims that 'it is a product of Muslim jurisprudence', and Jay Spaulding presented it not long ago as a forgery meant to promote Muslim interests.[5] However, in 1972 in the excavations at Qaṣr Ibrīm in Egyptian Nubia, a papyrus scroll from the eighth century was discovered, which contained a letter from the ʿAbbāsid governor in Egypt written in 141/758 to the king of Nubia and Muqurra, demanding from him 'what you owe of the *baqṭ* about which a peace agreement was made with you',[6] and demanding that the Nubians fulfil their side of the pact 'if you wish us to fulfil for you our compact (ʿahd)'.[7] Although this letter is not the original conquest agreement, it indicates that the governor in the mid-eighth century believed that there was a valid surrender agreement, similar in its contents to the agreement found in the literary sources. The authenticity of the Nubian *baqṭ* is thus well attested by this letter, and as a result provides some support for the authenticity of surrender agreements that are referred to or cited by Muslim authors; yet it provides only a single, somewhat late, piece of evidence.

Two scholars, Albrecht Noth and Wadād al-Qāḍī, dedicated articles specifically to the question of the authenticity of these agreements.[8] Noth believes that the reports concerning the agreements reflect authentic documents, though these have been altered at times by the transmitters. He nevertheless assumes that some details, such as the obligation not to revile or hit Muslims, or the obligation to build roads or bridges, were added on later.[9] He adds that since we do not possess any copy of an original contract, we do not have any secure means of verifying whether these agreements are authentic, forged, or just a fiction. The question of the genuineness of these agreements, he notes, can only be examined with the help of inner criteria, which unfortunately can only be of approximate value.[10]

Al-Qāḍī has attempted to further support the authenticity of the surrender agreements.[11] She bases her argument on the texts of the agreements themselves, and following their comparison arrives at the conclusion that they were drawn up in similar ways, that they are grounded on similar formats including basically the same elements, that their style is standardized, and that their content is analogous. In addition, she also mentions that there exist formal Muslim documents of a different nature from the end of the first century of Islam that include similar phrasing, thus

supporting the idea that legal documents exhibiting the same style were already being written at the time.[12]

Al-Qāḍī's work does indeed go far in advocating the case for the authenticity of the agreements. In this chapter I would like to add further support to this argument with the aid of evidence found outside the corpus of Muslim literature. The evidence I will present here originates in the realm of the conquered rather than that of the conquerors. This external evidence is then supported and enhanced by the Muslim sources themselves. In this chapter it will be argued that the surrender agreements made between the Muslim conquerors and the representatives of various conquered entities (cities, regions, or groups) have their origin in an ancient tradition of international diplomacy and law which, *mutatis mutandis*, was still prevalent throughout the territories when conquered by the Muslims. This tradition was not only a norm accepted by the conquered population at the time of the conquest, but was known to the Muslim conquerors as well. If this is true, then not only is there no need to suspect the authenticity of these agreements, there is in fact good reason to acknowledge their validity.

TREATIES BEFORE THE MUSLIM CONQUEST

International treaties formed the main basis for international relations from ancient times throughout the ancient Near East, as well as throughout the Hellenistic, Roman, and Byzantine world.[13] I will give here just a succinct summary of this institution which highlights the predominant characteristics of this tradition in the early periods. This will be followed by a more detailed description of such treaties and agreements in the Byzantine period, prior to the Muslim conquest.

In the Graeco-Roman world international pacts and agreements were considered part of the *ius gentium* (the law applicable to all people). The treaty itself was under the sacred protection of the deity invoked by the oath. Zeus/Jupiter was called *Zeus horkios kai pistios*, i.e. the 'the guardian of oaths and good faith (*pisitis/fides*)'. This was the actual 'basis of obligation' in all agreements under international law. The requirement that treaties should be upheld (*pacta sunt servanda*) became a categorical imperative of international law.[14]

This tradition of treaty-making was characterized by various common elements: the pacts or agreements were concluded following preliminary negotiations; they required ratification of the sovereign body; they were

ratified by solemn oaths; they had a similar structure, often including pre-amble, stipulations, sanctions, provisions for deposit in the temple and periodical reading, and names of the gods acting as witnesses. It is often emphasized that they were written down. Copies of the treaty, written in many cases in two languages, were kept by both parties, usually in the temple, or published and placed in the archives. A pact or agreement was valid either for a certain period of time, or throughout the life of the ruler who signed it. Upon the death of one of the parties it became void, and needed to be renewed. It should be remarked that stipulations often included such elements as an obligation of loyalty, military aid, return of fugitives, giving hostages as guarantee of observance of the treaty by the vassal, and payment of an annual or lump sum of money. At times these treaties could be very detailed, and included specific information on various matters such as arrangements concerning the evacuation of people and territories, the army, hostages, boundaries, provisions, equipment, payments etc.[15]

There was a common terminology used in conjunction with the treaties.[16] Thus, the covenant was called 'bond and oath' or 'pact and promise' (e.g. Hebrew *brit we-ʾala*; Greek *horkos kai synthēkē*; Arabic *ʿaqd wa-ḥilf*;[17] Persian *pasht ud zēnhār*[18]) or called 'honesty' or 'confidence' (Akkadian *adē*; Aramaic *ʿdyʾ*; Hebrew *ʿedut* or *amana*; Greek *pistis*; Latin *fides*); 'a covenant was cut', i.e. made (e.g. Hebrew *karat brit*; Greek *horkia temnein*); violated – 'broken' (Hebrew *hepher*; Arabic *naqaḍa*; Greek *parabainein*; Latin *frangere*); the relationship was described as 'love and friendship' (e.g. Hebrew *ṭwb we-ḥesed*; Greek *filia kai symmachia*; Latin *amicitia et societas*) and more.[19] The existence of such a universal vocabulary demonstrates that treaty-making was based on a well-established set of rules, perceptions, and terms which formed the basis of understanding and accord between the negotiating parties and were commonly known and accepted throughout the ancient world.

The following survey will demonstrate that this tradition endured well into the end of Byzantine rule in the East, and that agreements and treaties, often including a long set of stipulations, securities, sanctions, and oaths, continued to be signed and witnessed. These agreements served as a central diplomatic tool throughout Late Antiquity in the relations of the empire with the competing political entity – the Sasanian empire – as well as with groups of lesser political status such as the Barbarians and the Arabs. As shall presently be shown it is this diplomatic tradition, in fact, that was to play a major role in the Muslim conquest of the Near East.

Treaties with the Sasanians

Throughout the centuries of Late Antiquity the Roman empire made a series of treaties with the Sasanian empire, including those of 244, 298, 363, 422, 505/6, 533, 562, and the last one, in 628, just a few years prior to the Arab conquest.[20]

As a matter of course these treaties were preceded by an offer of peace by one of the parties, followed by intricate diplomatic negotiations held by embassies which, on different occasions, were made up of envoys of various ranks: from those bearing plenipotentiary powers to those who served solely as messengers. During these negotiations the conditions of the future treaty were discussed, including boundaries and fortifications, various payments, property, diverse rights (e.g. rights of passage, or trading rights), withdrawal of soldiers, the fate of prisoners of war, hostages, etc.[21] Often these negotiations were conducted in writing, via an exchange of letters. Letters from the rulers on both sides also ratified these agreements.[22]

To note just the outstanding examples, the making of the treaty of 244 was recorded in the famous *Kāba-yi-Zardusht* inscription at Naqsh-i-Rustam as well as in various Roman sources.[23] In one of the several rock-reliefs depicting the kneeling emperor Philip the Arab offering peace to the mounted victorious Shāpūr I, Shāpūr is seen holding an object tied by a ribbon – most likely the agreement or its draft.[24] In 298, following Galerius' glorious victory over Narseh and the capture of Narseh's family and treasures, a detailed treaty was negotiated, with the Romans having the upper hand.[25] The main source in this case is Peter the Patrician (*c.* 500–64), Justinian's master of offices (*magister officiorum*),[26] who was himself sent as an envoy to Khusro Anūshīrwān and most probably had access to archival material. Peter adduces a full description of the negotiations, but does not actually supply the text or the exact terms of the treaty.[27]

The famous treaty signed in 363 by Jovian after his great defeat by Shāpūr, in which he ceded large areas in Mesopotamia to the Persians, is described in detail by Ammianus Marcellinus.[28] He explains how the Persians sent envoys to facilitate the opening of negotiations over a peace treaty (*pax*; *foedus amicitiae*), describes the negotiations in detail, and lists the terms of this treaty, adding that:

> When this shameful treaty (*decretum*)[29] was concluded, lest anything contrary to the agreements (*pactum*) should be done during the truce, distinguished men were given by both sides as hostages: from our side

> Nemota, Victor, and Bellovaedius, tribunes of famous corps, and from the opposite party Bineses, one of the distinguished magnates, and three satraps besides of no obscure name. And so a peace of thirty years was made (*foederata itaque pace annorum triginta*) and consecrated by the sanctity of oaths (*eaque iuris iurandi religionibus consecrata*).[30]

Zosimus adduces the terms of this treaty as well, noting that 'the truce (*spondai*) was concluded on these terms and confirmed by contracts (*grammatioi*) on both sides'.[31]

This 'shameful' treaty now had to be upheld, to the Byzantines' great dismay. Especially humiliating was the clause regarding the ceding of Nisibis and Singara and the evacuation of its population to Byzantine-controlled territory. Despite the repeated supplications of the citizens of Nisibis to be allowed to fend for themselves rather than evacuate their city, Jovian refused to break the treaty, claiming that he 'did not wish to incur the guilt of perjury',[32] 'stoutly maintaining the sanctity of his oath'.[33] This insistence demonstrates how binding these agreements were considered to be.

Ammianus could not disregard this claim, but insistently argues that in the past, in similar extreme cases, such treaties were annulled: 'In fact, the ancient records teach us that treaties made in extreme necessity with shameful conditions (*icta cum dedecore foedera*), even when both parties had taken oaths in set terms (*postquam partes verbis iuravere conceptis*), were at once annulled by renewal of war.'[34] He then proceeds to adduce the relevant cases. This not only demonstrates that the institution of the treaty (in the case of the Persians the 'equal treaty') was still functioning according to the same principles, but that it was indeed conceived by the Byzantines themselves as the same institution, abiding by the same rules, and subject to precedents of Roman legal history.[35]

Although the information regarding the technical side of the treaties of the fifth century is less detailed, there is enough to show that there was no basic change in the procedure and structure of these treaties.[36]

In 505/6, after several years of war, a temporary truce was signed.[37] According to the chronicle of Marcellinus Comes, who served as *cancellarius* in Constantinople under Justinian, Celer, the *magister officiorum*, 'resolved to conclude a treaty (*foedus*) with the Persians, when Armonius, secretary *a secretis*, had been sent to him to draft the treaty'.[38] Procopius says: 'So a proposal was discussed between them, according to which the Persians were to deliver over the city [i.e. Amida] to the Romans upon receipt of one thousand pounds of gold. Both parties then gladly executed the terms of the agreement (*ta sunkeimena*).'[39] Joshua the Stylite,

who gives a minute eye-witness account of these events, reports that once both the Persian and the Roman commanders saw that they were losing strength, they agreed to make peace 'on condition that the deal was approved and ratified [by both] rulers; if not, the war would continue'.[40] This condition cited by Joshua the Stylite relies once again on the Roman tradition mentioned above by Ammianus Marcellinus, according to which though the generals and envoys on site had the authority to sign the agreements, and though these signatures were considered valid, the contracts had nevertheless to be ratified by the rulers. It may be conjectured that in this specific case this condition may have carried more weight, and the agreement was actually not in force before its ratification by the rulers.[41]

The chronicle attributed to Zachariah of Mitylene adduces a somewhat different, yet exceedingly interesting, version regarding this treaty. According to him, Farzman, a warrior who had distinguished himself in fighting on the Roman side, came to the city and reached an agreement (*tanway*) with the Persians there, after which:

> Celer the master of Offices, gave to Kavādh eleven hundred pounds of gold for the ransom of the city and for peace. And when the documents were drawn up they brought the drafts [Syriac form of the Greek *apographas*] to the king for his signature. And the king fell asleep, and it was told him in a vision that he should not make peace (*shayno*); and when he woke up he tore up the paper, and departed to his own country, taking the gold with him. But Farzman remained in the city to govern its inhabitants and the country.[42]

Although this story may be suspected to be a popular myth, it is nevertheless significant to our discussion since it emphasizes both the authority of the signed documents and the importance of the ratification by the ruler, without which an agreement could not be proven valid.[43]

A significant example of this formal procedure is preserved in the account of Menander the Guardsman (Protector) describing the conclusion of the fifty-year peace in 562 between the Byzantines and the Persians. Writing in the second half of the sixth century,[44] Menander recounts in detail in his *History* the process of the negotiations, the stipulations of the treaty itself, and the technicalities it involved. Following the negotiations, and before the terms of the treaty were put down in writing, 'it was agreed that both rulers should provide the documents which are called *sacrae litterae* in Latin, and which confirmed everything that had been established by the ambassadors'. He notes that following

a full description of the terms these *sacrae litterae* were exchanged. He then provides a rare description of the process of the writing down of the treaty and its signing:

> When these and other issues had been argued out, the fifty year treaty was written out in Persian and Greek, and the Greek copy was translated into Persian, and the Persian into Greek. For the Romans the documents were validated by Peter the master of the offices, Eusebius and others, for the Persians by the Zikh Yesdegusnaph, the Surenas and others. When the agreements had been written on both sides, they were placed side-by-side to ensure that the language corresponded.[45]

Menander then goes on to list in detail the provisions of the treaty. He continues:

> When matters had progressed to this stage of orderly development, those whose task it was took the texts of the two documents and polished their contents, using language of equivalent force. Then they made facsimiles of both. The originals were rolled up and secured by seals both of wax and of other substance used by the Persians, and were impressed by the signets of the envoys and of twelve interpreters, six Roman and six Persian. Then the two sides exchanged the treaty documents, the Zikh handing one in Persian to Peter, and Peter the one in Greek to the Zikh. Then the Zikh was given an unsealed Persian translation of the Greek original to be kept as a reference for him, and Peter likewise was given a Greek translation of the Persian.[46]

From this outstanding description it may be gathered that the formalities of treaty-making demanded skill and expertise, and that they followed an accepted conventional procedure of writing and translating, inspection of the translation by both sides, followed by the formal signing, which involved an additional editing of the treaty, the making of copies, the sealing of the original documents and the impression of the seals by envoys and interpreters of both parties, and the exchange of the originals and of the copies to be used for reference. As always in the case of Rome and Persia, the treaty was one made between equals (*foedus aequum*), as is quite clear from Menander's account.

Although there is scant information concerning the treaty between Kavādh II and Heraclius in 628, there is enough of it to indicate that a similar treaty designated to restore the *status quo ante* was negotiated in a similar manner. The shah sent a letter requesting peace, the emperor replied and entrusted the *tabularius* (notary, registrar) Eusthantios with the negotiations, and the treaty was signed.[47]

Treaties with the Barbarians and the Arabs

These conventions were not limited to these two ancient empires, where they were long established,[48] but were adopted and employed by the Romans during the period of Late Antiquity in regard to two entities that entered into formal relationships with the empire: the Barbarians and the Arabs. In both cases there is evidence to show that they became *foederati* of the empire not only in name, but according to the same rules, practices, norms, and terminology to which the Roman empire had been formerly accustomed.

Barbarians

Before the case of the Barbarians is demonstrated, it should be noted that at times they introduced into the process their own traditional mores and diplomatic practices.[49] Thus, they seem to have had their own ways of surrendering, including not only the familiar supplication on bent knees and prostration, but also such gestures as throwing aside their weapons and falling flat on their breasts,[50] presenting themselves in the manner of criminals standing with bended bodies, and begging that swords be poised at their throats, an act which no doubt symbolized their fate if they were to break their oath.[51] When swearing, they drew their swords, 'which they venerate as Gods', and swore that they would remain loyal.[52] Ammianus notes in fact regarding the Sarmatians that 'never before had they been forced to present pledges for a treaty'.[53] When the Roman ambassadors met the envoys of the Huns they held a meeting 'mounted on horseback. For the barbarians do not think it proper to confer dismounted, so that the Romans, mindful of their own dignity, chose to meet the Scythians in the same fashion, lest one side speak from horseback, the other on foot.'[54]

In spite of all this, these tribes seem to have adapted to Roman diplomatic norms, and the sources indicate that they conducted negotiations, and signed peace agreements, according to Roman tradition. Most of these treaties are in fact unequal treaties (*foedera*) which followed capitulation to the Romans.[55] Thus[56] in 360 Valens sent envoys to the Goths offering them conditions; the envoys sent letters reporting that the Goths agreed to the conditions, a meeting place was agreed upon, a treaty was struck, and hostages were exchanged.[57] Elsewhere Ammianus reports how in 374, following a meeting between the emperor Valentian and the king of the Alamanni, a treaty (*foedus*) of friendship was confirmed between them by

the sanctity of oaths (*amicitia media sacramenti fide firmatur*). After that the king of the Goths was referred to as *socius* of the Roman people – the traditional *terminus technicus* for a Roman ally.[58] In 378, when Fritigern, leader of the Goths, negotiated with Valentian, he wished to become in fact *rex socius et amicus*, the traditional title of a fully recognized allied king.[59] The treaty was finally signed in 382 with Theodosius, following lengthy negotiations. Although no full description of it survives, the key terms may be reconstructed: the Goths became *foederati* or *symmachoi*;[60] they were allowed to settle in certain Roman territories yet to remain autonomous. They were not, however, given Roman citizenship or *conubium*. They were obligated to supply auxiliaries for the Roman army, and in return were to receive gifts and regular payments.[61] The fact that such complex treaties were negotiated indicates that the terms and the gestures of treaty-making were not just shadows of a past glorious institution; on the contrary, it seems that the institution of the treaty played an important role in contending with the challenge of the invading tribes. In fact, it may have even received a special impetus in this situation.

The treaty (*spondai*) made with the Huns when Attila came to power in 434 was sworn to each by his native oath (*patrion horkon omosantes*).[62] It was a complex and detailed treaty, and included the obligation not to receive fugitives from Scythia, to hand back those who were already in Roman territory along with Roman prisoners of war who had escaped, or alternatively pay eight solidi for each; in addition, it stated that the Romans should make no alliance (*mē symmachein*) with other tribes against the Huns and that there would be safe markets with equal rights for Romans and Huns. This treaty was to be maintained as long as the Romans paid a yearly sum of 700 pounds of gold to the Scythian kings. When the Huns broke the terms of the agreement and attacked the Romans at the market, the Romans blamed them for contempt of the treaty (*oligōria tōn spondai*).[63] Later on Attila sent letters to the emperor Theodosius II claiming the breach of certain clauses, after which he attacked the Romans. This was followed by the signing of a new treaty, whose terms were still more advantageous to the Huns. The point here is that the Huns adopted the Roman system, and turned it quite evidently to their own advantage. They indeed signed written treaties with the Romans, consisting of many clauses, most of which were clearly to their own benefit and profit. The Roman *foedus*, a sophisticated legal institution, was thus adopted and employed by the invading tribes here to overcome the Romans themselves.

Arabs

Alliances (*ḥilf*) and covenants (*ʿahd*, *ʿaqd*) among the Arabs were recorded in pre-Islamic times.[64] There is evidence of alliances of communities through a covenant in southern Arabia in the beginning of the first millennium BCE.[65] Written compacts kepts by the parties are attested in the sixth and seventh centuries (*kitāb*, *ṣaḥīfa*).[66] However, their terminology and contents vary to a great degree from those common in the Graeco-Roman world.[67]

Although sources regarding treaties with the Arabs outside the Arabian peninsula are less abundant than those with the Goths, there is enough to show that they were just as familiar with this institution as an international political tool as the tribes living on the northern borders of the empire.

Zeev Rubin has already noted that the bilingual Greek–Nabatean inscription found in Rawwāfa in Saudi Arabia, written between 166 and 169,[68] commemorating the dedication of a temple built by the Thamūdians to the Roman caesars Marcus Aurelius and Lucius Verus, clearly points to the existence of an alliance between these people and the Roman empire.

Another alliance with the Romans is evidenced in Imrū al-Qays' famous funerary inscription in Namārah from 328. Although, as Rubin notes, this inscription is full of lexicographic, palaeographic, and grammatical problems, the only thing that is quite clear in it is that Imrū al-Qays was an ally of the Romans.[69] Although we have no specific details regarding these alliances, it can be quite safely assumed, based on the cases already examined as well as those that will be presently presented, that an alliance necessarily entailed a written document.

There is ample information about the alliance made between Mavia, queen of the Saracens, and the Romans at the end of Valens' rule in 378 in the Byzantine sources.[70] It was actually a renewal of the Roman treaty made with the Romans by her deceased husband, who was 'king of the Saracens'. Sozomen notes that 'at that time, the Saracen king having died, the alliance with the Romans was dissolved (*eluthēsan*). Mavia, his wife, received the authority over the people and devastated the cities of Phœnicia and Palestine, as far as the place inhabited by those Egyptians well known to those sailing up the Nile, the inhabitants of the region called Arabia.'[71] The term used by Sozomen here regarding the treaty, *eluthēsan*, is more rightly translated as 'dissolved' since such treaties were always between rulers, and had to be renewed when either of the contracting parties passed away. As noted by R. C. Blockley, at that point 'the successor of a deceased could declare that

the treaty was ended and act accordingly … or he could seek altera-
tions, or simply renew the treaty, if the other party agreed'.[72] This is well
in line with Sozomen's description: the Saracen king dies, the treaty is
dissolved, and Mavia does as she wishes until new terms for an alliance
are negotiated.[73]

Rubin demonstrates convincingly that alliances with the Saracen tribes
were accepted and continuous. It seems that, following this renewal of
the alliance in 378, Mavia's people greatly aided the Romans in their bat-
tles against the Goths,[74] while later, in 389, the orator Pacatus noted that
'a punishment was exacted from the rebellious Saracens for the dishon-
ouring of a treaty'.[75] Rubin notes that Mavia's daughter continued this
tradition, and that the alliance with the Romans was still intact in 425.[76]
He continues to demonstrate how Mavia's rule was replaced by that of
Ḍuj'um (called Zokomos by Sozomen[77]), who headed the Arab *foederati*
in the following period, and argues convincingly that Zokomos, who had
converted his tribe to Christianity according to Sozomen, was in fact
the ancestor of the Ḍajā'im who according to Ḥamza al-Iṣfahānī lived in
Syria and Transjordan, and who converted to Christianity, became allies
of the Romans, and ruled other Arab tribes. Rubin thus claims the exis-
tence of a chain of alliances starting with Mavia, and continuing with the
clan of Ḍuj'am who in their turn were to be replaced by the Ghassānids.

Another case of an alliance with the Saracens is recorded by the his-
torian Malchus. He recounts how a certain Amorkesos, head of the tribe
of Nomalius (?), fled in 474 from Persian territory to the Romans, and
managed to seize Iotaba (an island off the shore of present-day Eilath),
and 'to become an ally of the Romans and phylarch of the Saracens under
Roman rule on the borders of Arabia Petraea'. His tribe too, according to
Malchus, was Christian.[78]

Yet another case is that described by Nonnosus, a member of a line of
diplomats in the service of the Byzantines who seem to have specialized
in negotiations with the people of Arabia. Excerpts of Nonnosus' descrip-
tion are preserved in Photius' *Bibliotheca*.[79] Nonnosus' grandfather had
been sent by Anastasius to sign a peace treaty (*eirēnē*) with Arethas, head
of the tribe of Kinda, while Nonnosus, his grandson, negotiated a treaty
(*kai eirēnikas etheto spondas*) with Qays, head of Kinda, at the time of
Justinian. Although the terms of this treaty are not described in detail,
Nonnosus recounts that as part of the treaty, Mu'āwiya, son of Qays, was
taken as a hostage to Byzantium, while Qays himself was called to the
emperor, and was appointed by him over the Palaestinas (*tēn Palaistinōn
hegemonian para basileōs edeksato*), bringing with him a large number of

his people.[80] It is not clear exactly what office or title Qays was honoured with; however, the terms – which included a royal hostage, an invitation to the emperor's court, and an honourable title and office – point to a very favourable agreement for Qays.[81] It is quite evident that this was a detailed treaty with specific terms that was in all probability recorded in a document.

It seems therefore, that the Roman (Byzantine) empire employed the traditional formal alliances in her relationships with the Arab tribes on its borders. Formal expressions of these alliances, such as skilled diplomatic envoys, dissolution of treaties following the death of one of the parties and the need for their renewal, blame for breach of a treaty, and the taking of hostages as security for the upholding of a treaty, all point to the existence of treaties signed according to the accepted Roman tradition. As we have seen that this was the case with the Goths and the Huns as well, this is not surprising at all. In the case of the Arabs, however, this is especially significant, since it indicates that they were quite familiar with the minutiae of formal alliances and treaties centuries before the Muslim conquest.

The point made here is that although conditions were no doubt much changed, and the superiority of the Roman empire was no longer unchallenged, it nevertheless continued to employ the same diplomatic practices.[82] In fact, signing treaties was the best way in which the later Roman empire could continue to effectively control the growing number of ties and commitments that were being made by the numerous parties.

The Roman tradition of making long and detailed treaties is therefore evident in the relationship of the empire with the Persians, Goths, Huns, and Arabs. Of course, changes had occurred through time. Already in the Byzantine period, treaties and agreements were no longer being inscribed on stone, or bronze tablets (see above), materials which enabled their preservation for posterity; they were now being written down on parchment or papyri – making them, alas, much more fragile and perishable. This explains the fact that, from the Byzantine period onwards, we only have knowledge of agreements rather than actual copies. The witnesses, who in Antiquity were often the gods themselves, could be replaced by human witnesses, as exemplified by Menander the Protector.[83] The parchment or papyri documents were naturally signed and sealed and no longer placed under the statues of the gods at the temple, and the ancient imprecations are absent from the treaties.

Nevertheless, the issues raised in the treaties and agreements signed in the Byzantine period – including the prohibition on alliances with other

political entities; fugitives; prisoners of war; hostages serving as security; supplying military assistance; and payment or other remuneration – were central in past agreements of the empire, and continued to play an important part in future agreements to be signed during the Muslim conquest of the East, as will be demonstrated later on.[84]

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LOCAL SURRENDER AGREEMENTS DURING THE ROMAN
AND BYZANTINE PERIOD

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Since most of the agreements during the Muslim conquest were made between the Muslim commanders and the cities they conquered, I would like to treat here the specific case of agreements made on the occasion of the surrender of a city or territory to its enemies. It seems necessary to refer here to two major phenomena which have a bearing on the nature of the Muslim surrender agreements. These are: (1) the position of the cities in the East throughout the hostilities between the Romans and the Sasanians in the centuries preceding the Muslim conquest; and (2) the history of surrender agreements made by cities prior to the Muslim conquest.

The Position of the Cities in the East during the Hostilities between the Romans and the Sasanians

The cities of the East, and especially those of Mesopotamia, had lived through a history of wars and instability in which they were the main victims, being raided, looted, and transferred from one side to the other from the beginning of Roman rule in the East. A short survey starting from the second century onwards will serve to emphasize the fact that by the seventh century this situation was considered almost natural by the inhabitants, who probably could not imagine any other way of life. Moreover, since the ruling empire could not be depended upon often enough to supply them with adequate fighting forces, a city's inhabitants were quite accustomed to taking responsibility for its fate. This meant that often they had to choose whether they wished to fight the advancing forces or to negotiate the city's surrender. All of this was often enough done independently, without consulting the central government or ruler at the time, and was therefore self-understood for many of the cities that were confronted by the approaching Muslim forces.

In the days of the emperor Trajan (r. 98–117) the Persians 'captured many cities and plundered many districts'.[85] According to John Malalas

(mid-sixth century) the Persians captured Antioch through an agreement with its inhabitants. Later Trajan managed to convince the people of Antioch though a secret communiqué to attack the Persians, promising them the support of the Romans.[86]

In 256 and in 260 Antioch was captured again by the Sasanians. The emperor Valerian's attempt to drive them back ended in a humiliating defeat. During Justianian's rule, in 538/9, Antioch was captured once again by the Sasanians.[87]

Around 350 the Persians attacked the cities along the Roman frontier, including Nisibis and Amida. As related above, the defeat and death in battle of the emperor Julian in 363 were followed by the surrender of Nisibis and Singara to the Persians, cities which had previously exchanged hands several times. On this occasion the newly appointed emperor, Jovian, concluded a 'shameful treaty'[88] with the Persians, ceding Nisibis to them. This was supposed to be mitigated by Shāpūr's agreement to allow the inhabitants of the city to leave the city for Roman territory. The people of Nisibis and the surrounding area begged Jovian to repeal his decision, but he refused; the inhabitants then begged for the right to fight the Persians themselves, but were refused on the grounds that the oath and the treaty could not be broken. After this rejection, Jovian marched through the mourning cities, 'who could not bring themselves to offer any cheer of pleasure, contrary to their usual practice'. The inhabitants of Nisibis were then transferred to Amida.[89]

Although there was comparative peace from the end of the fourth century and throughout the fifth, by the beginning of the sixth century trouble started brewing up again. In 502/3 the cities of Mesopotamia – Ḥarrān, Amida, Tella, and Edessa – suffered from harsh Persian attacks. Thus, when Amida was captured by the Persians a great number of the inhabitants were killed (Pseudo-Joshua and Pseudo-Zachariah mention 80,000!),[90] the city and its churches were looted and destroyed, and all the survivors apart from the old and disabled were taken into captivity and resettled in Singara.[91] During this attack it is first and foremost the people of Amida, as well as those of Tella and Ḥarrān, who played a crucial part in the fighting over their cities and the surrounding territory, while the Roman army was not always to be depended upon.[92] In fact, the local militias in this area, supported by provincial vexillations, were together responsible for the maintenance of their *pedaturae*, or sections of the wall.[93] It is also the inhabitants of these cities who obviously paid the terrible price of defeat.[94] This aroused great tension between them and the emperor. Thus, it is claimed in the chronicle of Pseudo-Joshua

that while there was terrible hunger among the remaining inhabitants of the conquered cities, the Roman troops lacked nothing. 'There were more things for sale in their camps than could be found in the cities, whether food, drink, shoes or clothing.'[95] Elsewhere he says that 'those who came to our assistance ostensibly as our saviours … looted us in a manner little short of enemies'.[96]

During the Persian Wars in the days of Justinian, many a city was attacked by the Persians: attacks on the cities of Mesopotamia and Syria were recurrent from 530 onwards; among these are Gabboula, Batnae, Martyropolis, Sura, Beroea (Aleppo), and finally, in June 540, Antioch. When the Persians arrived at Antioch the Roman army retreated, and left the inhabitants to fend for themselves. They fought heroically to the end, and paid a dear price once defeated.[97] The Persians raided the city, and looted its cathedral and churches. The war was renewed in 572 for another twenty years, and Dara, an important bishopric on the Tigris, was invaded and raided by the Persians. On that occasion many prisoners were captured and enslaved.

The final attack before the Muslim conquest occurred between 603 and 614, when the whole East, including Mesopotamia, Syria, Armenia, Cappadocia, Paphlagonia, Galatia, and later Antioch (611), Damascus (613), and Jerusalem (614), was taken over by the Persians and held until the end of the third decade of the century.[98]

As before, throughout this conquest the residents of the cities were the main victims of these attacks, paying with their lives, their freedom, and their public and private possessions for each defeat. Thus, for example, some time between 604 and 606[99] the city of Dara was besieged by Khusro Anūshīrwān for a year and a half; when the walls fell and the city was captured all its inhabitants were put to death.[100] The same picture emerges from the *Chronicon ad 1234* and the Chronicle of Séert. The decision to fight to the end involved a high risk, and the *Chronicon* asks: 'Was there any place which resisted him, which he did not destroy and ravage, whose men he did not kill, and whose people he did not deport?'[101] Séert recounts that 'Phocas was so busy killing his rivals that he neglected to resist the Persians who were moving into his empire, and ruining large parts of his country'.[102] It is evident, therefore, that the cities of the eastern Roman empire had suffered, especially throughout the sixth and beginning of the seventh centuries, an almost endless series of calamities, paying a heavy price for the tense and unstable relations along the Roman–Sasanian border. Often enough they were left to fend for themselves and to lick their wounds following heavy battles and cruel

defeats. It comes therefore as no surprise that these cities, so used to taking their fate in their hands, would negotiate their own surrender and conclude their own agreements independently and separately once the Muslim conquerors arrived on the scene.

The History of Surrender Agreements Made by Cities
Prior to the Muslim Conquest

Graeco-Roman tradition differentiated clearly between conquest by force (Latin *vi*,[103] Greek *kata kratos*[104]) and conquest by surrender (Latin *deditio*; Greek *homologia*[105]). While cities captured by force might be subjected to the killing and enslavement of their citizens and the loss of all their property, cities that capitulated could negotiate the terms of their surrender.[106] The surrender usually involved an appeal by the surrendered and a promise by the conqueror of *pistis* (in Greek) or *fides* (in Latin), both meaning 'faith', 'trust', or 'good faith'. As noted above, *pistis* (pl. *ta pista*/*fides*) stood at the basis of all treaties and agreements,[107] and came to have the meaning of 'an assurance that that produces confidence, *a promise, engagement, word, assurance, confirmation*', in particular '*a given promise of protection or security*; *a guarantee*'.[108] In Greek there is a clear connection between the ancient *horkia pista* or 'faithful oaths' taken on the occasion of the surrender and *pistis*.[109]

The Roman term for surrender was *deditio in fidem*[110] i.e. 'giving oneself up to the good faith or trust' of the conqueror. The exact implications of the classical *deditio in fidem* are unclear, and there has been an ongoing discussion of this question among classical scholars.[111]

Another option was the *deditio per pactionem*,[112] i.e. surrender accompanied by an agreement or pact (*pactio*, *pactum*, or *sponsio* in Latin; *pakton* (pl. *pakta*),[113] *spondai* (truce, treaty), and *homologia* in Greek). This was, as defined by Coleman Phillipson, 'a covenant usually entered into by a general, usually on his own authority, engaging to secure ratification by his government of the terms to which he had consented'.[114] This act was based on 'giving words' of promise or commitment, as is indicated in Latin, Greek, and Syriac. Thus the pact is also called in Latin *verba deditionis* (lit. words of surrender); in Greek *homologia* from *logos* (word), and in Syriac *meltā d-qyāmā*, word of covenant. It is interesting to note that in Greek there is no word for surrender other than *homologia*. The implication of this is that surrender was automatically accompanied by terms or an agreement, all of which are enfolded in this one term.[115]

Yariv Shahal, whose work concentrates on this institution in Republican Rome, demonstrates that at that time the order was the following:[116] (1) the *pactio* was agreed upon by the conqueror and the defeated; (2) this was followed by the act of the *deditio* or formal surrender; (3) the *pactio* was implemented; (4) the *pactio* was ratified by the Roman Senate. Although a *pactio* had to be ratified by the Senate or the emperor, it was considered a legal commitment on the part of the conqueror, and its breach was considered a wrong (Greek *adikēma*)[117] or injustice (Latin *iniuria* or *iniustitia*).[118] Cicero lists the *pactio* along with the *foedus* (treaty or covenant), *sponsio* (agreement), *amicitia* (friendship) and *societas* (alliance) as one of the rudiments of the legal relations between nations.[119]

It is thus clear that written agreements made between the conquering general and the representatives of the surrendering city were an integral part of the process of surrender in the Roman Republic, ensuring that once the surrender was implemented, the conditions agreed upon would be upheld and honoured by the conquerors.

As has been shown previously, regarding the treaties with the Sasanians, the main elements that stood at the basis of the institution of treaties remained intact, and were applied in a similar manner in the later Roman empire. This also holds for the institution of the *deditio*, and specifically the *deditio in pactionem*. Peter Heather adduces several examples dating from the fourth century, which demonstrate that the usual mechanism was in fact *deditio*, *foedus*, and then *restitutio* (restitution of the former social order).[120] In fact, he says:

> As far as the diplomatic theory of the Roman state was concerned, the Persians excepted, *foederati* were created by an act of surrender (*deditio*) on the part of the people involved, followed by a restitution of the existing social order (*restitutio*) and the making of a negotiated agreement (*foedus*) … To judge by its widespread appearance in a whole variety of texts, this theoretical framework was not only well developed and widely applied, but knowledge of it also widely disseminated among the literate classes of the Empire.[121]

Heather notes that while the framework remained fixed, the conditions of the agreements varied according to the circumstances:

> Roman diplomacy was a sensitive instrument for frontier management, which could be adapted to suit a wide variety of circumstances. Its treaties could express quite different degrees of domination, different practical demands were made of its subordinate allies according to need and possibility, native forms were utilized to add to the solemnity

of ceremonies, and it was standard, and eminently sensible policy to endeavour, via payments, to create a class of amenable, semi-client kings along its frontiers. The iron fist of imperialism was thus couched – as most successful imperialistic fists through history have been – in a practical, well-informed velvet glove.[122]

What I strive to demonstrate below is that this same mechanism was later to be employed by the Muslim conquerors, who adopted the frame of the surrender agreement, including the surrender, the agreement that followed it, and the restitution of the former social order, offering separate conditions in various circumstances according to their interests and possibilities. It is thus highly probable that the adoption of this mechanism was initiated by the conquered populations, by whom it had been employed for centuries. Additionally, although they were not as well versed in this, the Muslim conquerors, as has been shown above, were also familiar with this mechanism, and were thus readily willing to adopt it.

Such events of offers to surrender, negotiations, surrender of cities and the signing of *pacta/pakta* or surrender agreements by individual cities are indeed recorded by Byzantine historians in the period preceding the Muslim conquest, although these are not as numerous as one would expect. This is most probably due at least partially to the fact that ancient historians tended to concentrate their efforts on the main events, in this case on the main pacts and agreements signed between the rulers, as has been shown above, rather than report about local surrenders of one city or another. Thus they may often mention the latter in passing, or not mention it at all, while the major pacts are often described in great detail. Since obviously during the Muslim conquest no such global pacts either with the Byzantines or with the Sasanians were signed, it was necessary to adduce the local surrenders of cities one by one.

Having noted this, there are however several reports of such events. The treaty concluded independently between the city of Antioch and the Persians during the days of the Roman emperor Trajan has been referred to above:[123]

> The Persians captured Antioch the Great and occupied it not indeed by force of arms but by an amicable agreement and a treaty (*kata syntaxin phyliken kai pakta*) by which they controlled and guarded it for the Persian Emperor Sanathroukios. For the Antiochene dignitaries had of their own accord set terms for peace and submission (*kata idian pro-airesin pakta eirēnēs kai ʿupotagēs stēsantōn*) through an embassy to the Persian Emperor.[124]

In this case the dignitaries of Antioch initiated the signing of the treaty, and signed it without the consent of the emperor.

A brief mention made by Eutropius relates to a series of surrenders of cities (*deditio*) during Julian's expedition against the Sasanians. Unfortunately, however, he does not supply any details:

> Accordingly Julian took possession of the state and after vast preparations waged war against the Parthians. I was also a member of this expedition. He accepted the surrender of or forcibly seized several of towns and fortresses of the Persians (*aliquot oppida et castella Persarum in deditionem accepit vel vi expugnavit*).[125]

This unsatisfactory mention is filled in by Ammianus Marcellinus, who adduces some interesting cases of offers to surrender, negotiations, and agreements. He describes the case of two towns on the Euphrates on Julian's route:

> After these successful operations we reached a fortress called Thilutha, situated in the middle of the river, a place rising in a lofty peak and fortified by nature's power as if by the hand of man. Since the difficulty and the height of the place made it impregnable, an attempt was made with friendly words (as was fitting) to induce the inhabitants to surrender (*ad deditionem incolae temptati mollius*); but they insisted that such defection then would be untimely. But they went so far as to reply, that as soon as the Romans by further advance had got possession of the interior, they also would go over to the victors, as *appendages of the kingdom* (*regnorum sequelas victoribus accessuros*). After this, as our ships went by under their very walls, they looked in respectful silence without making any move. After passing this place we came to another fortress, Achaiachala by name, also protected by the encircling river, and difficult of ascent; there too we received a similar refusal and went on.[126]

Another relevant case is that of the walled city of Pirisabora described later on Julian's journey. During the siege laid on this city there was fierce fighting for some time until the breaking-point when Julian decided to build a special war-machine:

> To this huge mass, which would rise above the battlements of the lofty towers, the defenders turned an attentive eye, and at the same time considering the resolution of the besiegers, they suddenly fell to their prayers, and standing on the towers and battlements, and with outstretched hands imploring the protection of the Romans, they craved pardon and life (*fidem Romanam pansis manibus protestantes vitam cum venia postulabant*). And when they saw that the works were discontinued,

and that those who were constructing them were attempting nothing
further, which was a sure sign of peace, they asked that an opportunity
be given them of conferring with Ormizd. When this was granted, and
Mamersides, commander of the garrison, was let down on a rope and
taken to the emperor, he obtained (as he besought) a sure promise of
life and impunity for himself and his followers (*vita cum inpunitate sibi
consortibusque suis firmiter pacta*), and was allowed to return. When he
reported what he had accomplished, all the people of both sexes, since
everything that they desired had been accepted, made peace with trust-
worthy religious rites (*pace foederata cum religionum consecrationibus
fidis*). Then the gates were thrown open and they came out, shouting
that a potent protecting angel had appeared to them in the person of a
Caesar great and merciful. The prisoners numbered only 2,500; for the
rest of the population, in anticipation of a siege, had crossed the river
in small boats and made off. In this citadel there was found a great
abundance of arms and provisions; of these the victors took what they
needed and burned the rest along with the place itself.[127]

Here the mechanism of surrender and the agreement are described in
detail: the inhabitants seek assurance of protection from the Romans,
that is the *fides Romana*, and ask for pardon and for their lives; work
on the war machine is ceased – a sign of receptiveness on the part of the
Romans; the besieged then request a meeting with the Roman general (of
Persian origin), Ormizd; this is granted. The city gates however, remain
closed, while Mamersides, commander of the garrison, is let down via a
rope; surprisingly, rather than meeting the Roman general he is brought
to Julian himself, who promises them life and impunity; Mamersides then
returns to the city, and only after having passed this information on and
conferred with the people of the city does he announce the surrender of
the city. It is then that peace of *foederati* is made (*pace foederata*), i.e.
unequal peace, sealed by oaths of *fides*.

Unlike cases in which the surrender was made early on, here it fol-
lowed a long period of fierce fighting; the conditions of the sworn agree-
ment were therefore minimal, and included only the life and impunity
of the remaining inhabitants. It may be that in such a case the terms are
agreed upon orally and there is no need for a signed document, although
it is quite possible that the promise of the protection of their lives and
their impunity was given in writing.

During the rest of the fourth century and most of the fifth, no doubt
as a result of the relative peace that prevailed throughout this period,
there is no information regarding surrender of cities. Further informa-
tion is found regarding the fifth and sixth centuries. Several examples

of peace agreements made by cities in Mesopotamia with the Sasanians are found in Procopius' *Wars*. After Khusro Anūshīrwān besieges Edessa in 544, attacks it, and finds it impregnable, he offers its inhabitants and the Roman general an agreement or treaty (*symbasis*; *homologia*). His interpreter Paul calls for Martinus, the Roman commander 'in order that he might make arrangements for the agreement (*symbasis*). Thus Martinus came to a conference with the commanders of the Persians, and they concluded an agreement by which Khusro Anūshīrwān received five centenaria from the inhabitants of Edessa, and left them, in writing the terms of the peace (*en grammasin autois tēn homologian apelipe*) not to inflict any further injury upon the Romans.'[128] Although this description is short, it is nevertheless clear that it follows the accepted norms according to which one side offers to hold peace negotiations, the generals of both parties meet and confer, and the terms are agreed upon. The terms are then set down in writing and the agreement is signed.[129] The term used here, *homologia*, is the accepted term employed to convey terms of peace or surrender, as mentioned earlier.

A similar attempt, made at the beginning of the same siege, failed when the conditions offered by the Persians seemed unacceptable to the Romans, as Khusro Anūshīrwān had demanded an amount unacceptable to the Edessans, who had offered to pay as much as they had provided previously, when he threatened them following his capture of Antioch.[130] It is thus evident that Khusro Anūshīrwān was interested in accumulating wealth and property rather than in controlling the area, and employed the Roman mechanism of surrender and agreement in order to achieve this end.[131]

Another case in point is that of Beroea (540). Just like in the case of Edessa, Khusro Anūshīrwān was prepared to negotiate for peace in return for a lump sum of money. While the inhabitants of Edessa had managed to purchase for themselves a surrender agreement which included their lives, as well as their property and freedom, actually a restoration of the previous state of things, the people of Beroea were unable to do so. Therefore their bishop, Megas, informed him that they had no money and 'entreated him to grant him only the lives of the men'. Khusro Anūshīrwān fulfilled his request 'and binding himself by an oath, gave pledges to all on the acropolis' (*diomosamenos hapasi tois en akropolei ta pista edōke*).[132] In this case, it is clear that the *pista*, i.e. the assurances or guarantees, meant their lives only; there was no written agreement including additional stipulations, and, as Procopius goes on to say: 'The Beroeans … left the acropolis free from harm, and departing went each his own way.'

In the case of the city of Sura (540), the inhabitants, believing themselves defeated, sent their bishop to Khusro Anūshīrwān 'to beg that the town be spared'. Bringing along a gift of fowls, wine, and loaves, the bishop promised that 'the men of Sura would give him ransom worthy of themselves and the city which they inhabited'.[133] As in the previous case, this is once again an offer of a surrender agreement. Khusro Anūshīrwān pretended to consider the offer, but in fact carried out a surprise attack, burning the city to the ground, killing many of its inhabitants and taking the rest as hostages.[134]

It was only afterwards that an agreement was made between Khusro Anūshīrwān and the bishop Candidus of neighboring Sergiopolis. The latter vouched for the hostages and promised to pay Khusro Anūshīrwān for their release, the payment to be made at a future time.

> Khusro therefore requested him to set down in a document the terms of surrender (*ho Chosroēs ēxiou en biblidiō tēn homologian aphenta*) that he would give the money at a later time … Candidus did as directed … and swore the most dire oaths (*horkous deinotatous omōmokōs*) specifying that he should receive the following punishment if he should not give the money at the time agreed upon, that he should pay double the amount and should himself be no longer a priest as one who had neglected his sworn promise.[135]

The same mechanism was applied during the Sasanian conquest of the East at the beginning of the seventh century. Sebeos notes that:

> The [Edessans] because of the multitude of [Persian] troops and their victory in the engagements and since they had no expectation of salvation from anywhere, parleyed for peace, and requested an oath that they would not destroy the city. Then, having opened the city gate, they submitted. Similarly Amida and Tella and Reshʿeina and all the cities of Syrian Mesopotamia willingly submitted and were preserved in peace and prosperity. They went to the city of Antioch, and these too willingly submitted with all the cities and their inhabitants, fleeing from the sword of Phocas.[136]

The people of Edessa asked for peace and negotiated the terms; only after this had been done did they open the gates of the city and submit. Other cities that submitted apparently did the same, as they 'were preserved in peace and prosperity'. The agreement reached in Edessa, as well as in the case of the rest of the cities of conquered Mesopotamia, thus allowed for a restoration of the previous conditions following the surrender.

When describing these same events the Syriac chronicles chose to use the idiom 'they gave their word' (*yahbū meltā*) or word of oath, or word of assurance for *fides/pistis*. Although this is not a literal translation it does convey the same basic meaning of 'promise of assurance' which is referred to by the Latin and Greek sources. It should be noted that in Greek the word *logos* can signify 'promise' as well.[137] The *Chronicon ad 1234* thus reports that after the Euphrates had been crossed by the Persians, Antioch, Apamea, and Emesa were conquered. The latter city 'was given the word by them and they submitted to the Persians'. Damascus chose to submit, and 'the Damascenes gave their word that they will raise tribute' to the Persians.[138] Later on, when the Byzantines managed to defeat the Persians within the city and they surrendered, 'they gave them their "word of covenant" (*meltā d-qyāmā*) that they will leave and go to their land'.[139] When describing the events of 506/7, Joshua the Stylite reports that the Persians and the Byzantine *magistros* 'drew up an agreement (*qyāmā*) and made peace (*shaynā*). They composed written terms (*ktābē*) between them.'[140]

Although in both of these cases the description is very succinct, the previous evidence regarding the events of the Persian conquest leaves no doubt that these reports refer to the same institution of surrender and agreement.

The same mechanism was once again used upon the reconquest of these territories by Heraclius towards the end of the third decade of the same century. According to the Melkite Alexandrine Patriarch Eutychius, the Jews of Tiberias and the Galilean mountains welcomed the victorious Heraclius with gifts and asked him for an *amān*, which he granted them, giving them a written agreement. Here it was not a city but a religious community that was requesting an agreement.

However, somewhat later, the Christians begged him to retract this agreement and to kill the Jews for having assisted the Persians in the mass murder of Christians and in the destruction of churches in Jerusalem as well as in Tyre. Heraclius refused, saying: 'How could I consider it lawful to kill them after I have given them *amān*[141] and written an agreement to that effect? You know what is incumbent upon one who breaks the agreement (*ma yajib ʿan man naqaḍa al-ʿahd*)! If the agreement (*ʿahd*) and the *amān*[142] will be broken [by me] it will be a disgrace and terrible defamation for me.'[143] Nonetheless, he finally consented to break the agreement, having been persuaded by the Christians that they would help him atone for the sin. Heraclius' statement fits in well with the Roman concept as expressed by Polybius already noted above[144] that the breach of such

a surrender agreement was considered a wrong (Greek *adikēma*)[145] or injustice (Latin *iniuria* or *iniustitia*).

To sum up this discussion: both the grave and traumatic experiences suffered repeatedly by the cities, especially throughout the sixth and early seventh centuries, and the established tradition of concluding surrender agreements in the Roman and Byzantine East generated the signing of surrender agreements between the Muslim conquerors and the inhabitants of the conquered cities. Throughout the Muslim invasion, as in the century that preceded it, the empire was unable, most of the time, to protect the inhabitants of the cities. The signing of surrender agreements thus seemed the most reasonable option, if the right terms of surrender could indeed be obtained.

SURRENDER AGREEMENTS MADE FOLLOWING THE MUSLIM CONQUEST

We come now to the agreements made between the Muslim conquerors and the conquered cities and territories. As will presently be shown, these agreements were actually inspired by the long-existing tradition of agreements that was prevalent in the territories conquered by the Muslims in the seventh century.

Several characteristics inherent in the agreements with the Muslims demonstrate that they indeed continue this tradition:

The Terminology

Amān

The most common term in Muslim literature defining the relationship between the Muslim conquerors and the surrendered city is *amān*. The term is translated as safety, protection, safe-conduct, and an assurance of safety and security. The relevant idioms are *ṭalaba minhu al-amāna* (he demanded from him an assurance of safety) and *aʿṭawhu amānan* (he granted him an assurance of safety), as well as *dakhala fī amānihi* (he entered into his protection).[146]

The meaning of *amān* is thus parallel to the Greek *pistis* and the Latin *fides*, all of which denote faith, trust, protection, and assurance of security. It is most interesting therefore that the term *amān* does not appear as such in the Qurʾān, and that it actually developed and came into usage at the time of the conquest, as noted by Joseph Schacht: 'The institution of *amān* continues, in fact, the pre-Islamic Arab institution of *jiwār* by

which a stranger, who was in principle outlawed outside his own group, received for his life and property the protection of a member of a group to which he did not belong, and therefore the protection of the group as a whole.'[147]

Emile Tyan notes that the institution of *amān* played a very important role in international law; it made it possible to avoid some of the consequences of the basic principle of a permanent hostile state between the Muslim world and the rest of the world, permitting the sojourn and the free activity of strangers in Muslim territory.[148]

Sura 9 of the Qur'ān, discussing the relations between the believers and the polytheists, chooses to use the terms *'ahd*, *dhimma*, and *jiwār* rather than *amān*.

The term *amān* is also absent from the first agreements referred to and cited by the sources, which were made by the Prophet with cities in the Arabian peninsula such as Khaybar, where the term consistently used is *ṣālaḥūhuʿalā ḥaqn dimāʾihim (wa-tark al-dhuriyya)*.[149] The same terminology is used in relation to Fadak.[150] In reference to Ayla the root *ʾmn* appears in a verb: *'wa-kataba lahum kitāban bi-an yuḥfaẓū wa-yumnaʿū'* (and he wrote them a document that they will be protected and will be secure).[151] Regarding Najrān the text of the agreement cited on the authority of Yaḥyā b. Ādam reads: *'wa-li-najrān wa-ḥāshiyatihā jiwār Allah wa-dhimmat Muḥammad al-nabī rasūl Allah'* (and to Najrān and its dependants the protection (*jiwār*) of God and the covenant (*dhimma*) of the prophet Muḥammad, the Messenger of God).[152]

In two other cases the root *ʾmn* appears as a conjugation of the verb: the agreement with Baḥrayn, cited by Abū ʿUbayd, says that if they accept Islam they will be safe (*in āminū … fa-innahum āminūn*),[153] and in the agreement with Maqnā the version cited by al-Balādhurī, dictated to him by people from Egypt, reads: *'fa-innakum āminūn walakum dhimmat Allāh wa-dhimmat rasūlihi'* (From the time this letter reaches you will be safe, and you have the protection of Allah and the protection of his messenger); yet immediately following this comes: *'wa-inna rasūl Allāh yujīrukum mimma yujīr minhu nafsahu'* (Against whatever the Prophet of Allah protects himself, he will protect you).[154] It is quite clear in these cases that the dominant terms of protection here are *jiwār* and *dhimma*.

Only in later agreements does the noun *amān* start to appear regularly as the assurance of protection and, most important, the term *jiwār* disappears almost completely in connection with the protection of the non-Muslims.[155] It does, however, continue to be in wide use concerning the Muslims. The term *dhimma*, on the other hand, does continue to be in

use, although it is much less common than *amān* in this connection.[156] It thus seems that the later sources here were indeed following the terminology of the transmitters, which in their turn apparently reflected the usage of the early agreements.

How did the term *amān* come into usage? Nouns stemming from the root ʾmn, which carry the connotation of fidelity, firmness, trust, are recorded from antiquity in Hebrew, Aramaic, and Arabic.[157] The word *qyāmā* used in the Syriac idiom *meltā d-qyāmā* for 'word of oath' or 'promise of assurance' is actually equivalent to the Aramaic ʾamn, both meaning literally stability, firmness which may be trusted, and therefore also assurance and covenant.[158]

The word *amāna* appears in the Qurʾān with the meaning of trust (23:72, 2:283, 4:58, 8:27), and twice, citing the same passage, it appears as a synonym of *ʿahd*, i.e. covenant (23:8, 70:32).

It is thus quite evident that the root ʾamn served in the Semitic languages as faith, trust, assurance, and treaty. Just a small adaptation was therefore needed to create in Arabic a new term, *amān*, which acted as a specific unique legal term equivalent to *pistis/fides* bearing the specific meaning of assurance or promise of safety and protection, rather than just a general trust and differentiated from the Arabic *jiwār*, whose implications were too far-reaching and were too suggestive of insider status where non-Muslims were concerned. The verbs then used in Arabic with *amān* also point to the influence of the outside world: thus the *amān* is given (Arabic *aʿṭāhu al-amāna* = Greek *pistin didonai*, Syriac *yahbū meltā*; and one enters into the *amān*: Arabic *dakhal fī amānihi* = Greek *eis pistin elthein*). Apparently the people who surrendered asked for *pistis*, *fides*, or *meltā*, as this was the long-accepted technical term. This was translated into Syriac as giving word (*meltā* or *meltā d-qyāmā*) and into Arabic as *amān*.

Amān seems therefore to be a loan translation of the term *pistis/fides*, its meaning being a basic assurance of protection as was usually granted in such agreements in the long-standing tradition of the Graeco-Roman world.

Baqṭ

The word *baqṭ* comes from the word *pakton*, which in its turn is a Hellenized form of the Latin *pactum*. In the Hellenistic world this term was used for both a compact of mutual obligations and its connected payments. The Arabs used this expression for the tribute that was raised by Christian Nubia.[159]

As noted in the beginning of this chapter, the letter discovered in the excavations in Egyptian Nubia, written in 141/758[160] and sent by the ʿAbbāsid governor in Egypt to the king of Nubia and Muqurra, contained a demand to keep the *baqṭ* 'according to which you were given the agreement'.[161] It is already clear in the letter that the word had evolved to mean the payment to be made according to the *pakton*. Al-Maqrīzī, who adduces the text of the agreement in a chapter entitled '*Dhikr al-baqṭ*', takes trouble to explain the meaning of this term, speculating on its origin.[162]

It is obvious that the terminology used here for the agreement or the obligations rooted in it originated in the world of the surrendering party, i.e. the Nubians, who chose to use the common and well-known Greek term, and, as I will attempt to show, also contributed their perception of a surrender agreement which originated in their case in the Graeco-Roman culture embedded in Egypt. The concept of the *baqṭ* was so strong that it survived for centuries, long after its original meaning was forgotten.

The Verb qāṭaʿa ʿalā

This unusual usage of the verb, which is used rarely by Balādhurī as a synonym for *ṣālaḥa ʿalā*, denoting 'peace made on condition that …', thus: '*wa-qāṭaʿahu ʿalā bilādihi*',[163] or '*wa-qāṭaʿahu ʿalā itāwa*'[164], '*ṭalabū al-amān ʿalā an yatarājaʿū ilā arḍihim fa-qūṭiʿū ʿalā kharāj*'.[165] This special usage may also originate in the term to 'cut a covenant' in Greek (*horkia pista temnein*),[166] Hebrew *karat brit*.

The terminology used in the Syriac text regarding the events of the Arab conquest in the *Chronicon ad 1234*[167] reflects the common usages noted until now. Thus the traditional idioms used regarding agreements made prior to the conquest, which echo the Greek/Latin terminology, remain the same when agreements made with the Muslims are described:[168] giving assurances is *yahbū meltā*; an agreement or covenant is *ktābā* or *qyāmā*.[169] *Ktābā* here refers to a written agreement,[170] while *qyāmā w-māwmātē* i.e. covenant and oaths, is an ancient expression in Aramaic[171] parallel to the Greek *horkia kai pistis*; ʿUmar writes the inhabitants of Jerusalem 'letters patent as they wished concerning their churches and their customs' (*w-ktab l-hūn sigīliy(ū)n ayk d-bʾaw ʿal-ʿidātayhūn w-nāmūsayhūn*)[172] – the word *sigīliyūn* originating in the Greek *sigillon*. The stipulation that they be allowed to hold onto their customs (*nomoi*) is a common one in the ancient treaties where the expression is *kata patrious nomous* (according to the customs of their ancestors).[173] All of this shows that in the view of Syriac historiography

the agreements made with the Muslims were part of the same ancient mechanism with which they were familiar.

It should be added here that when drawing up these documents in the Arabic language, the Muslims introduced their own terminology as well, including terms such as *dhimma*, which became the most dominant expression in their relationship with non-Muslims, the expression *lā yasullū wa-lā yaghullū*, used in the 'vassal-treaty' type (see nn. 256–97), an expression which appears in the Ḥudaybiyya agreement, the provision of *naṣīḥa* (advice), which appears in *ʿahd al-umma*, and others, thus adapting these agreements to their own language, tradition, and mentality when it suited them.

The Procedure of Surrendering

Like their Graeco-Roman predecessors,[174] Muslim commanders made a distinction between conquest of a city by force (*ʿanwatan*) or through an agreement (*ṣulḥan*).

It has been claimed by Noth that many reports, especially regarding the conquest of Egypt and Iraq, did not originate at the time of the conquest, but were rather a product of Umayyad political agendas.[175] While it is of course possible that specific reports regarding the conquest were modified to suit certain interests at later times, the institution that stands at the basis of these reports was nevertheless one that originated in the Graeco-Roman world and was adopted by the Muslim conquerors.

Muslim sources describe a process analogous to the process known from the pre-Islamic Near East: once a city surrendered, it received an *amān = pistis/fides/meltā*. The granting of an *amān* was usually accompanied by a document listing the conditions that were agreed upon in the *ṣulḥ* (peace agreement) (*kitāb, kitāb amān, ʿahd, ṣulḥ*, and the verbs *wa-ṣālḥūhum ʿalā; ishtaraṭūhum ʿalā; qāṭaʿūhum ʿalā, aʿṭūhum amān ʿalā, āmanūhum ʿalā* followed by the conditions).[176] This was therefore a conditional surrender, which was often accompanied by a written agreement: *homologia, pakton/pactum, qyāmā*, or *ktābā*, Arabic *kitāb, ʿahd, ʿaqd*.

The process of obtaining a surrender agreement is well exemplified by the case of the city of Marwarūdh, located 260 km south-east of Marw, which, having rebelled against the Muslims, surrendered in 32 H/652 CE. According to al-Ṭabarī's description[177] the inhabitants were besieged by the Muslims and finally surrendered. An ambassador representing the *marzubān* of Marwarūdh emerged from the city with a letter, asking

the Muslims for safe conduct, and they gave their consent (*āminūnī fa-āmanūhu*). The letter expressed submission to the Muslims: 'We praise God, in whose hands are the turns of fortune, who transfers kingship as he pleases.' The letter then proceeded to ask for 'peace terms with you (*muṣālaḥatuka wa-muwādaʿatuka*)[178] on the [same] lines as my grandfather's submission'. The *marzubān*'s letter then proceeded to lay out specific terms including the payment of 60,000 *dirhām*s to the Muslims, the confirmation of his control over the territory and possessions given to his great-grandfather by Khusro as a reward for killing the serpent that was intimidating the inhabitants of the area at the time, the exemption of all the members of his household from tribute, and an assurance of his title as *marzubān* of the area. 'I have sent you my nephew Māhak to seek a pact with you concerning my requests' (*li-yastawthiq bika bima saʾaltu*).

The surrender was thus offered depending on acceptance of the conditions stipulated in the letter. Al-Aḥnaf, the commander representing the Muslims here, replied in a letter again cited fully by al-Ṭabarī. He emphasized that the letter was written on behalf of all the Muslims who were with him, and gave his consent to the terms presented, citing them one by one. He also added his own condition: 'You, together with the heavy cavalry who are with you, are likewise obliged to aid the Muslims and fight their enemies … in return you are owed the aid of the Muslims.' Once both sides had consented, the agreement was witnessed, dated, signed, and sealed.

A similar, although less detailed, description is adduced by al-Balādhurī in the case of Jurjān, transmitted by the elders of Dabīl:[179]

> As Ḥabīb [b. Maslama] was advancing against the patrician of Jurjān, he was met by a messenger of the patrician and the inhabitants of the town, and presented a written message and asked for a treaty of peace and security (*wa-saʾalahu kitāba ṣulḥin wa-amānan*). Accordingly, Ḥabīb wrote to them: 'Your messenger, Nuqla, came to me and my companions "the Believers" saying on your behalf that we are a nation whom Allah has honoured and given superiority … You also stated that you would like to make peace with us (*innakum aḥbabtum silmana*). As for your present, I have estimated its value and considered it a part of your tax. I have written you an *amān* (*wa-katabtu lakum amānan*) and inserted one condition in it. If you accept the condition and live up to it, well and good. Otherwise, then be you apprised of war [that shall come upon you][180] from Allah and His Messenger.

Here again, the non-Arabs approached the Muslims through an envoy carrying a letter, admitting to the superiority of the Muslims, and asking for a peace agreement. On the basis of this letter, the contents of which

are not revealed here, Ḥabīb wrote an agreement, adding a condition considered imperative by him.

We thus see here a case of conquest through surrender (*ṣulḥan*) in which the procedure of the surrender on terms, familiar from the Graeco-Roman tradition, is clearly followed. It is evident here that these are written agreements, made on a basis of a written letter of surrender.

As already noted above,[181] Muslim sources report that such agreements were indeed being written in the days of the Prophet. Thus, in the cases of al-Ṭāʾif,[182] Baḥrayn,[183] Ayla,[184] al-Jarbāʾ and Maqnā,[185] and Najrān,[186] the format of the agreement is a *kitāb*, i.e. a document. In the cases of Maqnā, and particularly Najrān, especially detailed agreements are adduced. However, these early agreements were not written in the terminology and format that would characterize the later agreements, and seem to indicate that at that early date the tradition, which was common outside the Arabian peninsula, had not yet infiltrated Arabic culture as it did later, at the time of the conquest.

Actual Copies of the Agreements

Early Muslim literature often mentions the existence of copies (*nusakh*, sing. *nuskha*) of these agreements, and some of the versions cited are claimed to have been copied from such copies. Thus, regarding the agreement of Maqnā, al-Balādhurī says: 'An Egyptian told me that he saw with his own eye their agreement (*kitābuhum*) on a red parchment, the writing partly effaced, and he copied it and he dictated it to me as follows.'[187] As for the copy of the agreement with Najrān, al-Balādhurī reports that al-Ḥusayn heard from Yaḥyā b. Ādam, who said: 'I copied the copy of the agreement of the Prophet (*nuskhat kitāb rasūl Allāh*) to the people of Najrān from the *kitāb* of a man who took it from al-Ḥasan b. Ṣāliḥ.'[188] Although these reports should not be taken at face value, they nevertheless indicate that the actual existence of written copies was taken for granted.

Referring to the existence of written agreements in Egypt, Ibn ʿAbd al-Ḥakam cites a tradition in the name of ʿUbayd Allāh b. Abī Jaʿfar, who said that there were three people who kept a copy of the ʿahd with ʿAmr, stating their names and their dwelling places.[189] He also adduces a conflicting tradition transmitted by Zayd b. Aslam according to which ʿAmr had 'a wooden box (*tabūt*) in which he held all the agreements he made, and there was no agreement from Egypt there'.[190]

This contradiction illustrates well enough that information regarding these copies was often undependable. Yet it does emphasize the fact that agreements were indeed written, and that the documents were expected to be kept by both parties.

Al-Qāḍī notes that traditions regarding written versions of agreements cannot serve as proof of the existence of these copies, and believes that at least some of the agreements made were oral agreements.[191] This cautious attitude should, however, be reconsidered in the light of the prevalent tradition in the Near East: as shown above, beside the official documents exchanged by both sides, additional copies of the agreement were indeed made and kept by both sides for administrative use. Thus, although we cannot of course take all these reports at face value, it cannot be doubted that copies of agreements existed, and above all that the inhabitants of the city that received the agreement preserved both the original and its duplicates carefully, as these served as their insurance policy. This does not exclude the possibility that in exceptional cases the agreement was an oral rather than a written one. This must have been true, during the Byzantine period as well as during the Arab conquest, in cases when the surrender came after heavy fighting and those surrendering were granted their lives only, or in cases of extremely insignificant or marginal places. Written agreements, however, were clearly the rule.

Al-Qāḍī herself notes, in fact, that these agreements were renewed when a new governor was appointed, or when a new caliph came into power.[192] This, too, is in line with the Graeco-Roman model, in which agreements were to be renewed upon the death of one of the parties.[193] Al-Qāḍī adduces several examples: the new governor of Egypt, Yazīd b. ʿAbdallāh al-Ḥaḍramī renewed the agreements of Barqa and Anṭābulus. In the process of the renewal, the former agreement was brought to him by Ibn Diyyās al-Naṣrānī al-Qubṭī (*ātāhu bi-kitāb ʿahdihim*);[194] the Nubian *baqṭ* and the agreement with Ruhā were renewed by ʿUmar b. ʿAbd al-ʿAzīz.[195] In the case of both Ruhā and Barqa–Anṭābulus, it was the locals who produced a copy of the agreement (in Ruhā it was the bishop of the city who was asked to produce one). The same is true of Ṭiflīs, whose people brought the agreement given to them by Ḥabīb b. Maslama to al-Jarrāḥ b. ʿAbdallāh al-Ḥakamī, who renewed it.[196] Al-Qāḍī infers that the Muslims did not have a sufficiently developed administrative system in the days of ʿUmar and ʿUthmān for the authorities to keep a copy, and therefore depended on the copy held by the conquered.[197] This does not necessarily follow. It is more probable that the *dhimmī*s concerned simply wanted to be sure that it was indeed the same version that

was being renewed, while the governor or caliph who renewed it could inspect the terms before signing the new agreement. If we are to judge by the agreements cited by al-Balādhurī, al-Ṭabarī, or Abū ʿUbayd, there must have been ample copies of such agreements. Having said this, it is of course quite likely that not all the agreements were zealously renewed. Rather, it may be assumed that this often occurred when there were relevant issues at hand which prompted one party or the other to insist upon a renewal of the contract.

The fact that the original agreements were considered legally binding documents is illustrated by an incident in Damascus around 800 CE related by Ibn ʿAsākir.[198] He cites Ibn al-Muʿallā (d. 286/899)[199] who reported that he had read a document (*kitāb sijill*) written by the *qāḍī* of Damascus, Yaḥyā b. Ḥamza (d. 176/792).[200] The document recounts how the Christians of Damascus came to the *qāḍī* claiming that the Muslims had taken over their churches (*ghalabūhum ʿalā kanāʾisihim*); they asked him to fulfil the covenant (*ʿahd*) given them, and the agreement (*kitāb*) written for them by Khālid b. al-Walīd. The *qāḍī* then cited the agreement produced by them. He checked the agreement and found that it was their own proper agreement (*wa-qaraʾtu kitābahum fa-wajadtuhu khāṣṣatan lahum*), he also checked the *jizya* and confirmed that this was indeed their proper *jizya*. Once he was satisfied, he ruled that the people they had sued should if possible return the property itself to them, or if not, compensate them adequately. The same view is also expressed by Abū Yūsuf in his *Kitāb al-kharāj*, and by al-Shāfiʿī in *Kitāb al-umm*,[201] who both insist that the *ʿuhūd* were binding legal documents. This is especially striking if we consider the fact that the agreements were first and foremost documents assuring the protection of the *dhimmī*s: their lives, their personal and public property, and their religious freedom. In fact, as shall be demonstrated in the following chapter, by the time of Abū Yūsuf and Yaḥyā b. Ḥamza the *qāḍī* of Damascus, these agreements often seemed an encroachment upon the rights of the Muslims. Nevertheless, they were respected by the Muslim authorities.

The Structure of the Agreements

Al-Qāḍī has already demonstrated that the structure of the agreements is uniform, and usually includes most of the following elements: the *basmala*; the names of the giver/s and the receiver/s of the *amān*; the territory included; the stipulations; the witnesses; the scribe; the date; the signatures; and, in several cases, the seal. Al-Qāḍī notes that the uniformity of

the structure supports the authenticity of the documents.[202] Indeed, this formal legal structure of the *amān* agreements as well as their elaboration and sophistication, which made them so suspect in the eyes of many, was in fact not a late anachronistic invention of Muslim jurists, but rather an adaptation of the common Near Eastern tradition, specifically the Graeco-Roman tradition in the East.

As we have seen above, in the Byzantine period formal agreements were indeed being written down, dated, witnessed, signed, and sealed, and copies were made for the use of both parties. They usually included a detailed list of stipulations as well as terms of validity. Rather than making them suspect, the structure of the Muslim agreements, as well as their uniformity, confirms their connection to the ancient treaties and supports their authenticity.

The Characteristics of the Agreements

The extant versions of agreements made by the Muslim conquerors comprise several elements which are common in pre-Islamic Near Eastern treaties too.

Formulae of Oaths

Ancient treaties were witnessed by the gods, and were secured through invocations of the gods, oaths, and imprecations.[203] In several Muslim agreements we find the formulae '*shahida Allāh wa-malāʾikatuhu*' (God and his angels have witnessed)[204] or '*shahida Allāh wa-malāʾikatuhu, wa-kafā bi-Allāhi shahīdan*' (God and his angels have witnessed, and God is a sufficient witness).[205] In many others, the *dhimma* is not *dhimmatu al-muslimīn* but that of Allah and his Prophet. Thus for example in the agreement with Miṣr:[206] 'For the terms of this document (*ʿalā mā fī hadhā al-kitāb*) the covenant of Allah and his protection and that of his Messenger (*ʿahd Allāh wa-dhimmatuhu wa-dhimmatu rasūlihi*), and that of the Caliph, the Commander of the Faithful, as well as the protection of the Believers, are guarantees.'[207]

The involvement of the deities is even more accentuated in the case of the Nubian *baqṭ* as cited by al-Maqrīzī; in case of the breach of the covenant:

> this *hudna* and *amān* will be revoked (*bariʾat minkum*) and we both will return to a state of parity until God judges between us. He is the best of judges. In this matter [we take] upon ourselves the covenant of Allah

and his promise (*ʿahd Allāh wa-mithāqihi*) and his obligation and the
obligation of his Messenger Muḥammad … and you owe us the most
esteemed obligation of what you profess, that is the obligation of Christ,
and his Apostles and the obligation of those you venerate of your reli-
gion and people. God is the witness between us and you as to this matter
(*Allāhu al-shahīd baynana wa-baynakum ʿalā dhalika*).[208]

Here the need to secure the covenant through a binding oath by both par-
ties, each to his own deity, seems especially significant and noteworthy.[209]
It may well be that the commitment of the deity in the treaty was also
demanded by the surrendering party who, as demonstrated above, saw
the oaths as an inseparable part of the agreement, which guaranteed its
fulfilment.

As stated above, in the later Roman and Byzantine periods many of
the treaties were no longer witnessed by the gods.[210] This is also true of
many Muslim agreements, which merely have the *basmala* invocation at
the head of the document.

The Stipulations

The stipulations themselves may be divided into two different types, both
of which seem to have had their origins in the ancient traditions of the
'surrender treaty' and the 'vassal treaty'.

The 'Surrender Treaty'.[211] This model represents the total surrender
of the inhabitants of the city, which would thenceforth be ruled by
the Muslims. It is found in most of the agreements regarding the cit-
ies in Egypt, Syria, and Mesopotamia, including agreements relating
to Ruhā,[212] Damascus, Miṣr,[213] al-Ḥīra, Ardabīl, Bihqubādh, Baʿalbakk,
Jerusalem, Ludd, and Filasṭīn, and it appears to emanate from a Roman–
Byzantine model. It is basically a *kitāb amān* enumerating the obliga-
tions of protection that the Muslims take upon themselves, including (in
various combinations) the protection and safety of the inhabitants of
the city, their children, monks, priests, property, mills, churches, monas-
teries, and crosses; and the obligation to allow them to hold onto their
ancestral customs, and not to coerce them to accept Islam,[214] in return
for the payment of *jizya*.

In some cases it is phrased simply as 'we owe you protection and you
owe us *jizya*': '*lakum al-dhimma wa-ʿalaykum al-jizya*',[215] or, in the case
of al-Ḥīra: 'he made an agreement with them in return for the payment
of 190,000 *dirhām*s … and [their] protection': "*āhadahum ʿalā tisʿīn
wa-miʾat ʾalf dirhām … wa-ʿalā al-manʿa*'. This payment was to be made
on a yearly basis. In addition, the agreement expressly says that if they

are not defended as promised, they need not pay their dues until their defence is restored.[216]

This model does not, in fact, demand anything from the surrendering city other than the recognition of Muslim rule in the form of the payment of *jizya*, while the obligations of the Muslims are in most cases (though not in these last two) enumerated in detail. Such agreements, which were probably the most any surrendering city could wish for, are attested in the Graeco-Roman tradition.

We have already cited the treaty between Rome and Pharos in which the *polis*, the ancestral customs, and the lands were given back to the citizens of Pharos following their *deditio*.[217] A similar agreement is cited in a letter of the consul Gnaeus Manilius Vulso in 189 BCE to the inhabitants of Heraclea. Following the defeat of Antiochus III at the battle of Magnesia in 190 BCE, large parts of Asia Minor were transferred from Seleucid to Roman rule. Cities that had surrendered to Rome prior to this battle were awarded their liberty, lands, and laws.[218] The Roman Senate provided guidelines based on which a commission headed by Vulso acted in 188 BCE.[219] The process of surrender described here is very similar to the one described above (see 'The Procedure of Surrendering'), as are the conditions agreed upon:

> Greetings from Gnaeus Manilius son of Gnaeus Consul of the Romans, president of the ten envoys to the council and the people of Heraclea. Your envoys, Dias, Dies, Dionysius, Anaximander, Menedemus, Moschus, Aristides and Menes, honorable men have appeared before us, presented your decree and in person have discussed favourably the matters set forth in your decree, omitting no respectful sentiment.
>
> We are well disposed to all the Greeks, and since you have come over to our allegiance (*pistis*), we shall try to take due thought for your interests, since we are always contrivers of some benefit. We concede your freedom (*eleutheria*) to you, as also to other cities that have conceded a protectorate (*epitropia*) over themselves to us, and are allowed to keep all their possessions under their own control; we allow you to govern yourselves by your own laws (*kata tous hemeterous nomous*) and in other respects we shall try to benefit you and to further your interests at all times. We accept from you your gifts and your pledges (*philanthropa kai pisteis*) and we shall try not to be surpassed in requiting favours. We have sent to you Lucius Orbius to be curator of your city and your territory, that no one may molest you. Farewell.[220]

There are of course significant differences between this letter and the Muslim agreements. This is a unilateral statement rather than a signed bilateral agreement. There is no mention of a regular tribute to be paid

(like the *jizya*); although it is highly unlikely that the city was exempt from paying taxes, the exemption is not mentioned explicitly. Nonetheless, despite these differences, several central elements of this letter are found in the *amān* agreements. Like in many of the latter, the Roman commitment in the letter is given in answer to a formal embassy which presented a decree of the city council and discussed its requests with the representatives of the conquerors. The decree states that the citizens of Heraclea asked the Romans for *pistis* or *fides*, buttressing this requst with gifts. On their part, the new rulers, wishing to be benevolent, gave the inhabitants assurance of their (supposed) freedom,[221] possessions, and the right to govern their city according to their own rules, just as the Muslims would in the *kitāb amān*. The Roman conquerors also stated their obligation, just as the Muslims were to, to defend their new protégés. Unlike the Muslims, the Romans appointed a Roman curator to the city (all in the name of 'freedom').

Despite the significant gap in time between the two, the similarity in form and content between this letter and the *amān* documents is quite impressive. However, while this and many other similar documents[222] from the second century BCE were luckily preserved, I know of no such formal documents from the later Roman empire that have survived. Nevertheless, enough evidence from the chronicles has been adduced above[223] to demonstrate that the same mechanism continued to be in use. As we have seen, the same terminology, including the *deditio*, *pistis/fides*, *conditiones*, *pactum/sponsio*, *homologia*, *pax*, *foedus*, *restitutio*, and their equivalents or loan-translations in Greek and in Syriac continued to be employed, and there are numerous examples of negotiations leading to terms and agreements that follow the Roman model. Embassies exchange letters, the terms continue to be set down in writing in documents and letters, and the agreements are sealed by dire oaths.

In the case of the treaties with the Sasanians we have information regarding the terms themselves, and in several cases the stipulations of the treaty are described by the sources in detail. Regarding surrendering cities, however, the sources are not as generous; thus, while we can attest to the continuity of the model, the sources do not supply detailed descriptions of the content of the agreements. This is not surprising since a survey of the written sources in the Republican period provides, as the later sources do, myriad reports concerning agreements, but does not adduce the texts, or the full content of the agreements, as the inscriptions do.[224]

This said, the main elements of the agreements, including the security of the civilians' lives, their property, and their right to continue living

according to their ancestral laws without interference, as well as payment in some form or other, are reflected in the reports.

This may be buttressed by a somewhat different, yet relevant, example also concerning the protection of community rights which is recorded in an appendix to the Byzantine–Persian treaty of 562, cited by Menander Protector. The document concerns the rights of the Nestorian Christians living under Persian rule. Unlike the previous cases that have been discussed until now this is not a surrender agreement, but rather a paragraph seeking to secure the religious rights of a community already living under Sasanian rule. It does, however, seem to echo the classic clause central to surrender agreements, which allowed the surrendering inhabitants to live according to their ancestral laws (Greek *kata tous patrious nomous*; Syriac *nāmūsayhūn*), and therefore to go on with their lives without any major interruption or change[225]:

> When these matters had been agreed and ratified, they turned to a separate consideration of the status of the Christians in Persia. It was agreed that they could build churches and worship freely and without hindrance sing their hymns of praise, as is our custom (*kata nenomistai hemīn*). Furthermore, they would not be compelled to take part in Magian worship or against their will to pray to the Gods that the Medes believe in. For their part, the Christians would not venture to convert the Magians to our belief. It was also agreed that the Christians would be permitted to bury their dead in graves, as is our custom.[226]

The right to worship freely according to their custom (*nomos*) is found in most of the *amān* agreements (e.g. *amān* to you, and your children, and your families, and your monasteries, and your houses of prayer, and your religion (*milla/dīn*) and your prayers).[227] The term *nomos/nomoi* is translated literally in many of the agreements as *milal wa-sharā'i'*.[228] This seems in fact to have taken the place of the former 'ancestral customs' (*patrioi nomoi*).

All in all, it seems that the similarities between the Graeco-Roman model and the Muslim model of the 'surrender treaty' are striking enough to demonstrate convincingly the resemblance of the two.

The 'Vassal Treaty'. This model acknowledges the continuity of the local leadership under Muslim sovereignty. It is attested in the agreements in the area of Iran, including Jurjān, Ṭiflīs, Māh Dīnār, Māh Bahrādhān, Iṣfahān, al-Rayy, Qūmis, Ṭabaristān wa-Jīljīlān, Ādharbayjān, Marwarūdh, Armenia, Harāt with Bādghīs and Bushanj, and Mūqān. It includes all

ILLUSTRATION 1. Map of the locations of surrender treaties and vassal treaties (only where the actual text of the treaty is cited)

the elements of the previous model, and contains further stipulations imposed on the conquered inhabitants rather than upon the conquering Muslims, giving the agreement a more reciprocal character.

These stipulations include several obligations: (1) to give sincere counsel and military aid to the Muslims (*wa-lana naṣīḥatukum wa-ḍalaʿukum*;[229] *ʿalā aʿdāʾ Allāh*; *wa-lana naṣḥukum wa-naṣrukum*;[230] *wa-inna ʿalayka nuṣrata al-muslimīn wa-qitāl ʿaduwwihim*)[231] or, in another form, to give counsel and hospitality (*wa-la yughayyar shayʾ min dhalika ma adaw wa-naṣaḥū wa-qaraw al-muslimīn*)[232] or *wa-ʿalā an yanṣaḥū wa-la yaghshū*, i.e. to give advice and not conceal anything;[233] (2) to be loyal (*wa-ʿalayna al-wafā*);[234] (3) to serve as guides to the Muslims (*irshād al-ṭarīq; arshidū ibn al-sabīl; hidāyat al-ṭarīq; dalālat al-muslim*);[235] (4) to give hospitality to a Muslim in need of it (*qirā al-muslim al-muḥtāj*);[236] and (5) to take care of the roads and bridges in their territory (*an yuṣliḥū jusūrunā*;[237] *aṣliḥū al-ṭuruq*).[238]

Clauses regarding loyalty, military assistance, additional aid, the return of fugitives, and the obligation to show the way feature in ancient Near Eastern treaties.[239] These elements are also common in defensive alliances made during the Hellenistic and Roman periods, often between cities of

equal standing (*isopoliteia*), which promise to assist each other in case of attack or war (*symmachia*),²⁴⁰ or between Rome and cities or countries that had submitted to Roman rule (*foedus iniquum*).²⁴¹ As already noted above, the information regarding the Byzantine period is not as detailed, since no copies or versions of treaties have come down to us. Yet the sources indicate that this tradition continued to exist throughout the Byzantine period, and that issues of military assistance and loyalty played a central role in treaties with the Goths and the Huns,²⁴² as well as with the Arabs.²⁴³

However, the fact that the Muslims used the vassal treaty specifically in regions that had previously been part of the Sasanian empire and, as far as can be detected, not elsewhere may indicate that the direct model was a type of treaty used by the Sasanian shahs in their dealings with their feudal lords.²⁴⁴ Thus, this type of treaty may have represented an Iranian branch of the vassal-treaty model.

The obligations included in this type of treaty indicate that the relevant party ruled a wider territory than just a city and its vicinities. The most significant feature is the existence of an army which could be of assistance to the Muslims; in addition, the area comprised roads and bridges (plural), a feature characteristic of a region rather than a city. Most important, however, the majority of the names included in this list are of regions rather than cities, i.e. Jurjān, Māh Dīnār, Māh Bahrādhān, Qūmis, Ṭabaristān wa-Jīljilān, Ādharbayjān, Armenia, and Mūqān, while the names of the cities mentioned (Ṭiflīs, Iṣfahān, al-Rayy and Marwarūdh) may well be the capitals of their regions.

The existence of Sasanian signed documents which constituted contracts of investiture has been convincingly shown by Widengren,²⁴⁵ who has noted that signed documents of investiture given to the feudal rulers are mentioned in Firdausī's *Shāh-nāma* in several places: thus, Rustam speaks to the shah on behalf of Aulād, asking that he be given the land of Māzandarān: ' First he [Aulād] should be awarded the King's robe of honour, and given an edict and a seal (*'ahd-u muhr*).'²⁴⁶

A few lines later it is Rustam who is awarded such a written document by the shah: 'The hand of a scribe wrote an edict for him [i.e. Rustam] on silk, with musk, wine and aloe.'²⁴⁷ In this edict he was awarded the throne of Nīmrūz. A series of similar investitures, all awarded through such documents, is described later on in the *Shāh-nāma*, when Kay-Khusro, on his death-bed, grants decrees of territorial possessions to Rustam: Gaudarz, Gīv, Ṭūs. Here the words *manshūr* (letters patent) and *'ahd* (pact) seem to be used interchangeably, and each *'ahd* is sealed

with a seal (*muhr*) of gold.[248] Such documented investitures are also recorded by the Armenian historians Moses of Chorene and Thomas Artsruni.[249]

The central position of the feudal lords in the Sasanian empire stands out clearly in Shāpūr I's (r. 240/3–70/3)[250] inscriptions of Ḥajjiābād and Kaʿba-yi-Zardusht,[251] as well as in the Pāikūlī inscription from the end of the third century (293–4) where alongside the shah appear always the feudal chiefs, the Great Ones, the Nobles, and the Princes.[252] It has indeed been shown recently by Parvaneh Pourshariati that the noble Parthian families continued to carry significant weight, and that the Sasanian family was in fact dependent on alliances with these noble families throughout its rule.[253]

A series of events adduced by the Armenian historian Sebeos demonstrates well the relationship of Armenia, which had traditionally been such a vassal state of the Iranians, with the shah. Pīrūz (r. 459–84) had persecuted the Armenians; they rebelled against him, and a great battle ensued in which Pīrūz himself was killed. What followed is described by Sebeos:[254]

> He (Kawat)[255] also made a treaty with the Armenians, summoned Vahan[256] to court, and greatly honoured him. He bestowed on him the office of *marzubān* of the country and the principality of the Mamikoneans. He received an oath of full submission, and dispatched him peaceably to his own country.

Vahan, an Armenian noble, took an oath of submission to the shah, and received a vassal treaty appointing him *marzubān* of Armenia. When the office of *marzubān* was later taken away from the Armenians and given to the Persians they rebelled again, 'turn[ed] their allegiance to the Greeks', and the Byzantine emperor Justin II (r. 565–78 CE) 'made an oath with the Armenians and confirmed the same pact which had been made between the two kings – the blessed Tradat and Constantine'.[257] As shown above, these appointments were conferred through written documents.

The political allegiance of the vassal state is thus established through such treaties. Nothing is known regarding the contents of these documents. It is quite plausible, however, that they contained such obligations as those included in the 'vassal'-treaty model, i.e. loyalty, military assistance, counsel, and hospitality.

It is most probable that, when conquered by the Muslims, the feudal lords who were accustomed to this system offered the Muslims just the same kind of agreement. This fits in well with our knowledge that the

territories whose agreements were shaped after the model of the vassal treaty were indeed conquered by the Muslims, but not ruled and administered by them; rather, the local leadership continued to run them as before, only this time under Muslim jurisdiction. To cite Pourshariati: 'And thus, at the expense of the Sasanians, one after another, the Parthian dynastic families of the *kūst-i-khʷarāsān* and *kūst-i-ādurbādagān* made peace with the conquering Arab armies … Their motive: retaining defacto control over their territories.'[258]

The model used in the agreements with the Muslims was not completely uniform, as the demand to supply military aid does not appear in all cases. Most probably there were different models of vassal treaties (e.g. alliance vs. non-aggression treaty), or we may suppose that in some cases the model had to be altered. Thus, in some of the agreements there is a demand for counsel only, although sincere counsel or advice seem, according to the phrasing, to be relevant to military issues as well (see above). In addition, there seem to have been some situations in which the Muslims were willing to receive military aid, as in Armenia, where the inhabitants were obliged to aid in raids (*an yunfirū li-kul ghāra*),[259] or Marwarūdh, where the *marzubān* was obliged 'together with the cavalry with him, to aid the Muslims and fight their enemies'.[260] The term used here for cavalry, *asāwirā*, is actually an Arabicized form of the Persian *asavarān*, the cavalry that constituted the backbone of the Sasanian army.[261] In some cases military assistance substituted for the payment of tax. Thus, those people in Jurjān who took part in its protection were exempt from paying taxes.[262] The people of Darband actually asked for their tribute to be military assistance, and in return that the Arabs should not 'humiliate [them] with the [payment of] *jizya*'.[263] In many cases, emphasis was put on other sorts of assistance such as guiding the Muslim soldiers, according hospitality to Muslims (probably Muslim warriors), and keeping up the roads and bridges, also vital to Muslim control of the territory. On the other hand, in the case of Khurāsān and Ṭabaristān the agreement was that 'they would not be obliged or render help or assistance against anyone'.[264]

It is interesting to note that elements from this model serve as the basis of the treaty between Abū ʿUbayda and the people of al-Shām adduced by Abū Yūsuf,[265] citing Makḥūl al-Shāmī: it stipulates that the inhabitants shall be obliged to 'guide anyone who lost his way, to build bridges over the rivers out of their own funds, to accommodate any Muslim who passes by for three days … to light the fires for those following Allah's Way (*sabīl Allāh*), and not to reveal the weak points of the Muslims'.[266]

It thus seems probable that the type of treaty employed by the Sasanids for appointing their feudal lords was used as the basis for the agreements made by the Muslims with rulers of the different regions of Iran. The latter continued indeed to be run very much as before. If this is indeed the case, then again, the system adopted by the conquerors had its origins in the world of the conquered.

Detailed Agreements

As already mentioned,[267] most scholars claim that the minute details appearing in the agreements make them suspicious: in fact, the more detailed the agreement, the less likely they deem it to be authentic and trustworthy. Yet, as noted above, long and detailed agreements were quite common in the pre-Islamic Near East. The treaties between Rome and Carthage, for example, included a definition of a maritime boundary between the two, 'unless driven by storm or by their enemies. If anyone is compelled to land, he shall not be permitted to buy anything or to take anything except such as is necessary for the ship's supplies or for sacrifice; and within five days he shall depart.'[268] Another example is the comprehensive agreement signed between Rome and Antiochus III: the territories he was obliged to evacuate are defined, and it is specifically stated that he could take his weapons only, and nothing else. A time limit was set for all those who wanted to return to the liberated territories (just as would be done in the Alexandria and the Jerusalem agreements, as will be shown below). The size and equipment of his army was limited and defined, and a large fine was set upon him.[269]

This continued during the Byzantine period. To mention just a few examples, the treaty with Attila, mentioned above, was a very detailed one;[270] the treaty made between Rome and Persia in 298 included a minute description of the territories to be handed over to the Romans, a detailed definition of the boundary line, and the fixing of Nisibis as a sole trading point.[271] The treaty made between the Byzantines and the Persians in 562 is also long and detailed, and includes among others the following stipulations: the Persians are to prevent the Barbarians from entering the Roman empire; the agreement will include the Arab allies on both sides; merchants will conduct their business through specified custom points; ambassadors will travel freely back and forth; all Barbarian merchants shall travel through Nisibis and Daras with special permission; deserters and fugitives will be returned, etc.[272]

It should not surprise us, therefore, that such comprehensive agreements were drawn up following the Arab conquest, especially in the case

of important cities. These listed precisely the stipulations presented both by the inhabitants of the city and by the Muslim conquerors, depending on the specific conditions in each case.

The Treaty of Alexandria. John of Nikiu describes the capitulation of Cyrus, bishop of Alexandria to the Muslims on 8 November 641, and enumerates the conditions of the agreement they reached.[273] Although he does not actually cite the treaty, he does adduce its contents in detail. The treaty of Alexandria includes specific matters and arrangements that were made:

> And they fixed the amount of tribute to be paid. And as for the Ishmaelites, they were not to intervene in any matter, but were to keep to themselves for eleven months. The Roman troops in Alexandria were to carry off their possessions and their treasures and proceed (home) by sea, and no other Roman army was to return. But those who wished to journey by land were to pay a monthly (?) tribute. 19. And the Moslem were to take as hostages one hundred and fifty soldiers and fifty civilians and make peace 20. And the Romans were to cease warring against the Moslem, and the Moslem were to desist from seizing Christian Churches, and the latter were not to intermeddle with any concerns of the Christians. 21. And the Jews were to be permitted to remain in the city of Alexandria.

None of these terms are in fact surprising or incredible when compared to stipulations found in earlier agreements. Moreover, in this case, as well as in the following ones, evidence supporting the authenticity of these detailed agreements may also be found within the documents themselves.

In the treaty of Alexandria several of the stipulations had no significance except at the moment of the signing of the agreement: this is true of the arrangements concerning the departure of the Byzantine army; the commitment of the Muslims not to intervene in any matter for eleven months; the special clause stipulating that the Jews of Alexandria might remain in the city; and the clause referring to the hostages taken by the Muslims as a guarantee for the implementation of the agreement. This last clause has parallels in pre-Islamic treaties following wars, as in the case of Aetolia in 189 BCE or Antiochus III in 188 BCE, in the Roman–Persian treaty in 363, or the Goths in 360.[274]

Similarly, stipulations mentioned by John of Nikiu in the agreement made with Babylon/Memphis (Manf) include 'the promise that they should not be put to the sword', that they undertake 'to deliver up to him all the munitions of war', which were 'considerable', and the 'evacuation

of the citadel' with permission to take with them 'only a small quantity of gold'.[275] All of these are relevant only for a short period and have no long-term implications.

The Treaty of Jerusalem. The same can be said for the surrender agreement made with the inhabitants of Jerusalem (Ilīyā), adduced by al-Ṭabarī, citing Sayf b. ʿUmar, from Khālid and ʿUbāda.[276] The agreement includes, besides the usual clauses, specific provisions such as an obligation to expel the Byzantine army and the brigands, and an undertaking by the Muslims to vouch for their safety until they reach their haven; the possibility for the soldiers to remain as inhabitants in the city if they so wish; and permission for any inhabitant who so wishes to leave with the Byzantine army. The text goes here into precise detail, stating that 'those among Ilīyā's inhabitants who wished to take their possessions and leave the city alongside the Byzantines, thus abandoning both their churches and crosses,[277] (they, and their churches and crosses) will come to no harm until such a time as they reach a place of safety'. Another clause states that the peasants who were in city before the murder of a certain person (*fūlān*) may remain in the city as inhabitants. The taxes, it is specified, shall not be levied before the harvest.

Just as in the previous cases, here too we find clauses that have no future implications, and are, in fact, practical arrangements whose purpose is to provide the necessary means for a peaceful transfer of power and for the maintenance of stable rule in the city. Similar clauses pertaining to the opportunity given by the Muslims to leave with the Byzantines appear, for example, in the cases of Fiḥl and Tiberias.[278]

Especially disputed in the Jerusalem agreement is the clause prohibiting the Jews from living in Jerusalem. Samuel D. Goitein claimed that not just this clause, but the whole version of the agreement, was a forgery.[279] There is, in fact, no reason to believe that this clause is untrustworthy.[280] The absence of Jews from Jerusalem, their former capital and the place of their venerated Temple, was considered by the Christians an undeniable proof of the victory of Christianity over Judaism. The possible presence of Jews in Jerusalem was therefore a great threat from the Christians' viewpoint. Given that prohibiting the residence of Jews in Jerusalem was a key element in Christian policy, it is more than possible that the representatives of the Patriarchate of Jerusalem, headed most probably by the Patriarch himself, demanded that the Muslims include such a clause in the surrender agreement.

The fate of non-Christian inhabitants in Christian cities was also raised in other agreements. As cited above, in the agreement concluded

in Alexandria there was a clause stating specifically that the Jews were to be permitted to remain in the city. This was no doubt due to the fact that the negotiations on the side of the surrendering party were handled by Cyrus, the Chalcedonian Patriarch of Alexandria. It needed to be stated clearly that whatever was concluded was applicable to the non-Christian population of the city as well. A similar clause is to be found in the agreement of Dabīl (Dwīn), where the majority of the inhabitants were also Christians. The *amān* given to Dabīl opens thus: 'This is an agreement (*kitāb*) given by Ḥabīb b. Maslama to the Christian inhabitants of Dabīl, to its Magian [inhabitants], and to its Jewish [inhabitants].'[281]

In both Alexandria and Dabīl the agreements preserve the *status quo ante*. This is in fact just the case in Jerusalem, where Jews had not lived since the Bar-Kokhba revolt, which had been quelled in 136. The existence of a clause regarding the Jews in the agreement of Jerusalem is thus no exception; in fact, quite the opposite. It preserves the *status quo ante* which is firmly in the interests of the Christians. The actual presence of Jews in the city, just a short while after the conquest, is most probably a result of further negotiations made some time after the signing of the agreement.[282]

The Treaty of Marwarūdh. Another case in point, supporting the authenticity of the detailed agreements, is the Marwarūdh agreement.[283] The *marzubān* of the city asks for a ratification of the *status quo ante*, thus preserving the special status and rights that had been conceded by Khusro to his 'great-grandfather when he killed the serpent that was feeding on the people and cutting the roads that connected the lands and villages along with their inhabitants'.[284] The myth of the great-grandfather and the serpent here corroborated the rights of the *marzubān*, basing them on ancestral privileges. These ancestral privileges could only have been relevant at the time of the conquest, when they were still viable and could be confirmed by the local population, who were apparently familiar with the story. The manner in which the *marzubān* had obtained his status was of no interest to the Muslims, and certainly did not in itself create an obligation on the Muslim end. What did the Muslims care if his great-grandfather had killed a serpent (real or metaphorical) a hundred years before? It is therefore a local inner code, relevant only at the time of the conquest itself to the *marzubān* and to the inhabitants of that region, thus supporting the authenticity of the document.

The Treaty of Najrān. Another long and detailed agreement is that of Najrān, cited by al-Balādhurī as transmitted by Yaḥyā b. Ādam.[285] This agreement differs greatly in wording and style from the agreements

made outside the Arabian peninsula after the Prophet's death. Its special phraseology, which does not yet follow the accepted vocabulary of the agreements, supports its early date and therefore its authenticity. It does looks as if the original wording of this long and detailed document has been preserved to a large degree in al-Balādhurī's text.[286] It uses the word *jiwār*, which was abandoned in the later agreements, as seen already.[287] Other expressions used are: '*lā yughayyaru ḥaqq min ḥuqūqihim wa-amthilatihim*' rather than the '*milal wa-sharāʿ*' used later, or '*lā yuftanu uskuf min uskufiyyatihi wa-lā rahib min ruhbaniyyatihi wa-lā wāqih min waqāhiyyatihi*'[288] rather than '*amān ʿalā kanāʾisihim*', or '*biyaʿihim, wa-ṣulbānihim/ṣulubihim*',[289] or '*wa-biyaʿihim wa-ṣalawātihim wa-dīnihim*'.[290] The issues are similar, yet it seems that the phraseology that later became quite distinct had not yet developed.

Contentwise, this agreement seems to be a distinguished sample of the detailed agreements. The content of the agreement displays clearly that there were sensitive issues raised here, and that a meaningful process of negotiations took place. The Muslim demands are quite simple, and include a lavish payment in goods, which are listed precisely; a demand for hospitality; and the provision of military equipment in the war against al-Yaman. A sensitive point is the prohibition on taking interest on loans.

The Christians insist here on their religious and civil autonomy; the protection of all their property; their total religious freedom and the promise not to coerce them into converting to Islam; their exemption from military service; and the guarantee that no army should set foot on their land. An especially interesting clause is one that exonerates them from any responsibility for crimes committed before the rise of Islam. It is evident that this was a disparity treaty, in which the Najrānites were willing to acknowledge the sovereignty of the Muslims, and to pay them tribute, pending the acceptance of their stipulations, while the Muslims were willing to accept the latter on condition that their own stipulations (beside the tribute) were accepted as well.[291]

Here again, there are extremely minute details that would not have been drawn up unless they were actually relevant, such as the number of robes that the Najrānites agreed to transfer to the Muslims; the fact that they were to be handed over in two stages, a thousand in Ṣafar and a thousand in Rajab; that each should have the value of one *auqiya*; and that if the price of a robe was more or less than one *auqiya* this would be taken into account. Other listed goods could be given in place of robes. The agreement lists specifically the items that the Najrānites must supply

to the Muslims in case of a war with al-Yaman, including thirty coats of mail, thirty mares, and thirty camels. These the Muslims were committed to return, and to compensate for any losses. It thus seems that although the terminology was not yet set at the time, the concept of such treaties was well known to both parties.

The treaty of Najrān is therefore a prominent example demonstrating that disparity treaties were recorded and were well known to the inhabitants of the Arabian peninsula, and that they could indeed be very detailed. This treaty indicates, however, that the terminology that would later be adopted in the treaties following the conquest was not accepted during the Prophet's lifetime.

The Nubian Baqṭ. As already noted,[292] the Nubian *baqṭ* has been dismissed by many as completely untrustworthy. This detailed contract, reported by Ibn ʿAbd al-Ḥakam and cited by al-Maqrīzī,[293] was drawn up, according to the latter, in 651–2. This treaty is echoed, as noted above, in the letter sent by the ʿAbbāsid governor of Egypt to the king of Nubia and Muqurra in 141/758, whose existence testifies not only that such a treaty indeed existed during Umayyad times, but that its stipulations were indeed quite similar to those reported by the historians.

The letter itself is replete with technical details relating to the breaking of the treaty, and concerns matters relevant to the specific time of writing. It raises complaints regarding a certain tradesman by the name of Saʿd who had run away with someone else's fortune and had not been extradited, as agreed; it goes on to complain at length about the mistreatment of one Muḥammad b. Zayd, who had sent a merchant of his to Nubia. Not only was this merchant arrested by the Nubians, but Muḥammad himself was sent for. The latter arrived in Nubia, was himself badly beaten, and he and an accompanying group of Muslims were detained. All of this is adduced as evidence of the Nubians' breaking of the compact by hosting fugitives ('you are to return any Muslim engaged in hostilities against the other Muslims'),[294] not guarding the safety of merchants, and detaining envoys and other Muslims ('you are to look after the safety of any Muslim or ally [of the Muslims] who lodges in your territories or travels in them, until he departs from you').[295] In addition, the governor complains about the Nubians' neglect of the *baqṭ* – i.e. the delivery of Nubian slaves, who were to be supplied yearly according to the compact, and about the fact that those who had been sent included the one-eyed, the lame, weak old men or young boys[296] ('Each year you are to deliver 360 slaves which you will pay to the Imām of the Muslims

from the finest slaves in your country and in whom there is no defect …
Among them is to be no decrepit old man or woman or any child who
has not reached puberty').[297]

The close correlation between the letter and al-Maqrīzī's text is quite
impressive, especially given al-Maqrīzī's late date (d. 845/1442), and pro-
vides strong evidence as to the existence of a detailed treaty with the
Nubians from early times.

The clause regarding the payment in slaves was the cause of heated
discussion from the second century of Islam among Muslim jurists, who
believed that there could be no slave-trade with those who had an *'ahd*.[298]
This discussion, in fact, supports the authenticity of the clause, as already
noted by Forand and by al-Qāḍī.[299]

In sum, detailed agreements, should not therefore be considered
suspicious and untrustworthy simply for being detailed, for two main
reasons:

1. Such agreements containing long series of clauses were prevalent
   in the Near East from early times onwards. It is quite clear that the
   inhabitants of the conquered cities and territories were familiar
   with such documents, and demanded to be given such assurances
   at the time of capitulation.
2. Many of the clauses of the detailed agreements are *bona fide*
   clauses, reflecting specific issues raised at the time of the conquest,
   some of them having no relevance whatsoever just a short time
   after the agreement had been signed and implemented. There is
   no reason therefore to believe that they were invented at a later
   date.[300] On the contrary, the detailed agreements strengthen rather
   than weaken the case for the authenticity of the agreements in
   general.

Payments and Gifts Accompanying Surrender

Another feature appearing in agreements with Muslims, which is typi-
cal of the traditional agreements, is the custom of handing over to the
conquerors a large sum of money or gifts.[301] Thus the capitulation of
the inhabitants of Alexandria was accompanied by a generous payment
of gold, in addition to the tribute.[302] In the case of Jurjān and Qālīqalā
gifts sent to the Muslims are mentioned.[303] Apparently, in some cases, the
surrendering inhabitants continued their long-standing custom of send-
ing, along with their envoys, large sums of money or gifts to appease the
conquerors.

CONCLUSION

Many scholars have suspected that the agreements made by the Muslims with various cities, regions, and groups were forged, fully or partially, due to their 'unexpected sophistication' and to the late date of the Muslim sources that report them. Using non-Muslim sources from the world of the conquered populations, I have attempted to support the claim that the versions of the surrender agreements cited by Muslim authors from the second half of the eighth century onwards may well be based on authentic documents preserved both by the Muslim conquerors and by the local conquered populations.

The claim presented in this chapter is that the formal agreements concluded between the Muslims and the conquered populations in Syria and Palestine, Mesopotamia, and Iran were an additional link in a long tradition of such agreements common throughout the pre-Islamic world. The Arabs were in fact familiar with this tradition, and had already in previous centuries signed *foedera* with the Romans. In addition, the Prophet had before the conquest signed individual surrender agreements with cities in the Arabian peninsula. However, with the advancement of the conquest, the ancient Graeco-Roman tradition was brought to the fore by the conquered populations, dictating the character of the agreements made between the Muslims and the inhabitants of the cities. The negotiations, the format of the agreement, the terminology, and the nature of the stipulations contained in the Muslim agreements all reflect this long-standing tradition, while the famous term *amān* seems to have been the Arabic form of the basic tenet of all agreements in the pre-Islamic East: the *pistis/fides*. There is therefore no need to suspect these reported agreements; rather, there is good reason to believe that they reflect the original agreements made by the Muslim conquerors with the local populations, both sides being well aware that this was the accepted mechanism employed on the occasion of surrender to a conquering army.

We cannot, of course, ignore the fact that the versions of the agreements handed down to us by Muslim historians may, at times, be inaccurate, and at others, distorted and tampered with in order to serve certain purposes. Yet the existence of such documents, drawn up between the Muslim conquerors and the conquered populations of the East, cannot be doubted. The inhabitants of the conquered area knew well from their own centuries-long experience that drawing up documents at the time of surrender was the only means to assure their safety and well-being.

Shurūṭ ʿUmar and Its Alternatives

The Legal Debate over the Status of the Dhimmīs

The signing of surrender agreements allowed many of the inhabitants of the newly conquered territories to go on with their lives as they had before, even if this may have involved at times a certain measure of interruption or change, such as the Muslim occupation of houses deserted by Byzantines or the erection of a Muslim house on a plot allotted especially for this purpose.[1] The signed agreements were considered valid and binding by both the conquerors and the conquered.

This arrangement seems to have been sufficient for the initial period, a period in which the Muslims were occupied with ongoing conquests, trying to adjust to their new role as conquerors, and familiarizing themselves with the conquered territories and their various cultures and languages. Following this initial period, which may have lasted several decades or more in certain areas, a new process commenced. The Muslims, who were at first mostly conquerors on the move, were now settling down; although in some cases they established their own settlements and cities, the most prominent of which were the *amṣār* such as Kūfa or Baṣra, they often settled in existing towns and cities, thus creating close proximity between the Muslim conquerors and the non-Muslim conquered inhabitants. Moreover, non-Muslims soon settled even in the newly founded Muslim settlements, bringing about a situation in which Muslims and non-Muslims were coexisting side by side.

This situation was not accounted for in the surrender agreements, and there was a growing need to work out and define these newly created encounters, which increasingly permeated the daily lives of both Muslims and non-Muslims. The state of affairs was especially threatening to the Muslims, who had previously agreed not to interfere with the lives of the conquered, and now found themselves in insupportable situations where pigs and wine were sold in the open markets, Christians held loud and colourful liturgical processions, in which a processional cross with the figure of Jesus, as well as embroidered banners and icons of saints, were displayed throughout the main streets, and non-Muslims held high government positions and exercised formal authority over Muslims. This situation apparently became insupportable for the now-settled conquerors, who could not tolerate this situation where they could not check or restrict the behaviour of non-Muslims or prevent them from filling the public space with customs, ceremonies, and practices that often offended the Muslim inhabitants.

This chapter aims to follow the process by which the old arrangements documented in the surrender agreements were pushed to the background while new ones were slowly being discussed and introduced by the Muslims. This slow process ended with the acceptance of the well-known document *Shurūṭ ʿUmar*, which eventually became the canonical text summing up the principles and rules applied by the Muslims to the *dhimmīs* (non-Muslim inhabitants) under their rule.

The text of the *Shurūṭ* exists in various versions. It is not my purpose in this book to compare these or to follow the changes through time. Meticulous research covering these issues has already been undertaken by Daniel Miller.[2]

I will list here the best-known versions as well as the earliest ones. Antoine Fattal used the most famous version, which appears in al-Ṭurṭūshī's *Sirāj al-mulūk* from the beginning of the twelfth century.[3] Ibn ʿAsākir[4] in *Taʾrīkh madīnat dimashq* (twelfth century) adduces five different versions of the document with minor variations. Ibn Qayyim al-Jawziyya (first half of the fourteenth century), in *Aḥkām ahl al-dhimma*, cites two versions with further minor variations.[5] He devotes a very large chapter to the interpretation of this document, saying that it was so famous that he did not need to give its *isnād*, that it was accepted by *imām*s, inscribed in their books, and referred to by them; the text of the *Shurūṭ* was continuously on their tongues and in their books, and the caliphs executed it and acted according to it.[6] However, the *Shurūṭ* appears in much earlier texts. Several different versions, with some

interesting variations, appear in a text that was published several years
ago by Mark Cohen entitled *Juzʾ fīhī shurūṭ naṣārā*. The work is attrib-
uted in the text to Abū Muḥammad ʿAbd Allāh b. Aḥmad b. Zabr al-Qāḍī
(d. 940), and he appears in one of the versions as the earliest transmitter.[7]
This text is an important addition to the few early known versions of the
Shurūṭ. Another early version appears in Abū Bakr al-Khallāl's (d. 923)
collection of responsa by Ibn Ḥanbal.[8] Cohen also mentions an early
version attributed to Ibn Ḥibbān (884–965) whose work is cited by later
authors.[9] Aḥmad b. al-Ḥusayn al-Bayhaqī (994–1066) cites the *Shurūṭ*
in his *al-Sunan al-kubrā*.[10] Another comparatively early version of the
Shurūṭ appears in *Faḍāʾil bayt al-maqdis* written by Abū al-Maʿālī al-
Musharraf b. al-Murajjā (d. *c.* 1030–40).[11] These early versions provide
us with a *terminus ante quem* for the *Shurūṭ*, indicating that by about
900 the text was well known, and that there were already several versions
of it that were going around.

At a certain point the text of the *Shurūṭ* attained the position of a
canonical document regarding the status of the *dhimmī*s under Muslim
rule. In this chapter I will attempt to elucidate how this came about, who
were the promoters of the text, and what position it represented. I will
try to demonstrate that in the initial stages of the process this text did not
reflect a consensus concerning the status of the *dhimmī*s but in fact rep-
resented only one of several existing approaches to the issues in question.

THE DATING AND THE FORMATION OF *SHURŪṬ ʿUMAR*

When was the text of the *Shurūṭ* compiled and what was its *Sitz im
Leben*? The reasons for rejecting the attribution of this treaty to ʿUmar
b. al-Khaṭṭāb have been extensively expounded by Tritton and Fattal,
and need not be repeated here. It can hardly be doubted that the treaty
in the form we know it belongs to a period much later than the con-
quest.[12] Noth's suggestion to the contrary will be considered later in
this chapter.

Tritton, and Fattal in his footsteps, believed that 'it would seem that it
was an exercise in the schools of law to draw up pattern treaties'.[13] Fattal
assumed that 'it was the work of *mujtahids* of the third century AH [i.e.
the ninth century], who could not resist the temptation to assemble in
one document the successsive restrictions on the liberties of the *dhimmī*s,
without taking into account circumstances of time and place'.[14]

I will attempt to show that the eighth and ninth centuries appear to
have been a period in which the regulations concerning the *dhimmī*s were

the subject of a lively debate. If these treaties were a subject of study in the law schools, this was not because the jurists needed to exercise how to draw up treaties, as Tritton suggests, or simply to collect successive regulations in one document, as Fattal assumes, but rather because this was a burning social and religious issue in the caliphate and therefore also among Muslim jurisprudents.

It may well be that *Shurūṭ ʿUmar* existed even earlier than the ninth century, if the *isnād*s that appear in the different versions are to be trusted. Ibn ʿAsākir, for example, cites three transmitters in three of his versions of *Shurūṭ ʿUmar*, presented as the *ṣulḥ* agreement with the people of al-Shām:[15] Sufyān al-Thawrī, al-Walīd b. Nūḥ, and Ṣarī b. Muṣarraf.[16] Of the three, Sufyān al-Thawrī is the best-known figure; he lived between 97 and 161 H (716–78 CE) in Kūfa, Khūrasān, the Ḥijāz, and Baṣra, visited al-Shām, and belonged to the first group of scholars in Kūfa who arranged the Ḥadīth.[17] All three received the Ḥadīth from Ṭalḥa b. Muṣarraf (d. *c*. 112–13/730–1).[18] The *isnād* of the *Shurūṭ* in Ibn al-Murajjā's *Faḍāʾil bayt al-maqdis wa-al-khalīl wa-faḍāʾil al-shām* goes back to Muḥammad b. Kaʿb al-Quraẓī (d. 108–19/726–37).

If we date the text according to these *isnād*s it goes back to the first half of the eighth century CE. If we are more cautious and remain within the methodological limitations of recent *isnād* research, it is dated to the second half of the second Islamic century, i.e. the middle of the eighth century, the time of Sufyān al-Thawrī.[19]

In his article on *Shurūṭ ʿUmar*, Albrecht Noth argued that the text is in fact a collection of early understandings based on treaty traditions and on the praxis between the Muslim conquerors and the non-Muslim conquered population. He believed that the text is composed of three basic layers:

1. Clauses that go back to the time of the conquest. These comprise the basic *amān*, including the obligation of the conquerors not to cause damage to prayer-houses of the *dhimmī*s, and the obligation of the conquered to cooperate with their new rulers – e.g. act as guides for them in unknown territory, accommodate Muslims in their houses for three days, and allow them to enter their churches day and night. Noth also shows convincingly that the prinicple of *khilāf*, or *ghiyār*, the differentiating signs, goes back to a very early date.[20]

2. Clauses that belong to the period when Muslims settled in the newly conquered territories, and which serve the need to define the

practical arrangements between the two groups. To them he attributes the prohibition on the loud use of the *nāqūs* (the clapper or gong used in the East for the purpose of calling to prayer), and the prohibition on conducting processions and exhibiting Christian (or other) religious symbols publicly.

3. Other variations of these prohibitions that developed later, such as the prohibitions on praying loudly in Muslim neighbourhoods, on conducting funerals in Muslim areas, and on displaying signs of polytheism (*shirk*).[21] Noth thus believed that the *Sitz im Leben* of the earliest material in the *Shurūṭ* was in fact the time of the conquest, and that it reflected the spirit of that time, when the object was not to humiliate but to separate the Muslim minority from the *dhimmī* population, which constituted the majority at the time.

Noth's argument that some of the clauses reflect the conquest environment is convincing. Yet if it reflects different periods, as Noth claims, was its crystallization a process that occurred almost naturally and unconsciously, generation after generation, without any discussion?

I would like to suggest that this was not the case; rather, the text of the *Shurūṭ* was drafted and formed as part of an ongoing discussion concerning the status of the *dhimmī*s which started some time in the eighth century, most probably at the time of ʿUmar II b. ʿAbd al-ʿAzīz,[22] and culminated around the turn of the eighth century and the beginning of the ninth. If the *isnād*s are reliable, the text as we know it existed already in some form in the mid-eighth century; yet it was not the sole voice concerning the status of the *dhimmī*s. I will try to show that before the *Shurūṭ* became the canonized text, there was no single formal legal document concerning Muslim–*dhimmī* relations which was agreed upon. Rather, there were alternative versions which disagreed on several major issues. Tritton, who was in fact aware of the other versions, cited them all under the title 'the Pact of ʿUmar', and did not attribute any importance to the differences between them. Fattal, who was also familiar with other versions, noted that Abū Yūsuf's text reminds one strangely of the Pact of ʿUmar, and constitutes, in fact, an abridged version of it, the oldest that we possess.[23] I believe that rather than constituting an abridged form of this document, these versions represented alternative approaches concerning vital matters which seem to have been in dispute before the *Shurūṭ* became the established and canonical text.

LEGAL DISCUSSIONS THROUGHOUT THE EIGHTH
AND NINTH CENTURIES

Muslim tradition strongly emphasized the need to respect the individual *ṣulḥ* agreements that were concluded by Muslim commanders with cities and other entities. This is repeated time and again in many sources.[24] Although the need to mention this repeatedly raises the suspicion that this was not always so in reality, the agreements seem to have been a legal barrier, stopping the Muslims from freely modifying conditions according to their needs, as they would no doubt have liked to.

Thus, on the face of it all, the cities and settlements that had *ṣulḥ* treaties were living under clear agreements concluded at the time of conquest. This, however, was not enough to regulate relations between the Muslims and the *dhimmī*s.

There were (a) places conquered *ʿanwatan*, meaning that they did not have an agreement; (b) *amṣār al-muslimīn*[25] – cities founded by the Arabs after the conquest in which the *dhimmī*s were newcomers; and (c) the most complicated case – cities that had previously been populated mainly by *dhimmī*s, and even had *ṣulḥ* agreements, but which were gradually changing their characters to include more and more Muslims. How would this affect the status of the *dhimmī*s in those cities?

The last two cases were undoubtedly the product of changes and developments that were taking place from the second half of the seventh century and throughout the eighth and ninth, when Muslims were becoming an increasingly dominant section of the population. All these special cases raised many legal questions. Jurists became highly involved in the matter, presenting different opinions concerning the principles of Muslim–*dhimmī* relations – each supported, of course, by legal proofs and traditions.

The debate revolved around the issue of Muslims and *dhimmī*s living in the same neighbourhoods, and its implications. The discussions concerning this question usually invoked a *ḥadīth* attributed to Ibn ʿAbbās. Abū ʿUbayd cites the following version: 'In any city established by the Arabs, the *dhimmī*s are prohibited from building a prayer-house, wine is not to be sold, a pig shall not be bought, and a *nāqūs* shall not be sounded. Anything that was [agreed upon] beforehand, it is the Muslims' obligation to fulfil.'[26] A more detailed version of this *ḥadīth* is cited by ʿAbd al-Razzāq: 'As for what the Muslims established, a church cannot be raised in it, nor a synagogue, nor a cross, nor a spear-head. A horn will not be blown in it, a *nāqūs* will not be sounded, and neither wine nor

pig will be admitted into it. As for a place where a peace agreement was made – the Muslims are obligated to fulfil the [terms of the] *ṣulḥ* they made with them'.[27]

This *ḥadīth* differentiates between cities established by the Arabs, perhaps also those taken by them *ʿanwatan*, in which *dhimmī*s held no previous rights or privileges, and between cities and towns that were originally inhabited by *dhimmī*s and were conquered *ṣulḥan*. As we have seen in the previous chapter, the latter had treaties that usually gave them *amān* for their persons, their property, including prayer-houses, and allowed them to carry on with their lives as before on condition that they pay the *jizya* and provide hospitality and certain other services for the Muslims.

Ibn ʿAbbās's *ḥadīth* is in fact quite emphatic concerning Muslim obligation to adhere to these *ʿahd*s and fulfil their terms. It seems clear-cut, according to this *ḥadīth* therefore, that only in a city established or settled by the Arabs, where there was no *ʿahd*, could the rules of the Muslim *miṣr* be applied.

This interpretation could not, however, contend with the more complex situation that was gradually unfolding. What of a city that was conquered *ṣulḥan* but was gradually being populated by Muslims? Could the *dhimmī*s still carry on as before? Could they keep their prayer-houses? Could they go on practising their religious customs, especially those involving the public sphere, such as processions, or sounding the *nāqūs*? Could they exhibit their religious symbols and icons in public? Could they go on growing, selling, and consuming wine and pigs? All of these actions obviously affected the city's everyday life and created its atmosphere. Could a city under Muslim rule be of Christian character? Should the Muslims put up with public behaviour that contradicted Muslim law and thereby offended Islam? The narrow interpretation of Ibn ʿAbbās's tradition prohibits any change or intervention on the part of the Muslims; but by the eighth century this, as shall be seen presently, was, it seems, becoming unacceptable to them.

In fact, much depended on the interpretation of the expression *miṣr maṣṣarathu al-ʿarab* (a city established by the Muslims) since, if a city was defined as such, many restrictions could be imposed upon its Christian inhabitants. ʿAbd al-Razzāq (126–211 H) interprets it to mean 'whatever was part of the land of the Arabs or taken *ʿanwatan*'.[28] It is not completely clear what is meant here by *arḍ al-ʿarab*; however, since what was taken *ʿanwatan* (and, by implication, *ṣulḥan*) is a separate category, it is most likely that it refers to the Arabian peninsula. In the same chapter, however, ʿAbd al-Razzāq cites traditions concerning the status of churches

in *amṣār al-muslimīn*. He adduces traditions supporting the actual destruction of churches by ʿUmar b. ʿAbd al-ʿAzīz in both the old and new *amṣār*: *al-amṣār al-qadīma wa-al-ḥadītha*.[29] One tradition expressly claims that according to the *sunna* churches should be destroyed in both the old and new *amṣār*. This expression, *al-amṣār al-qadīma wa-al-ḥadītha*, apparently refers both to cities built by Muslims and to others that existed before the Muslim conquest, and were probably populated in later times by Muslims.

Thus interpreted, any city that had a considerable Muslim population was considered a Muslim *miṣr*, and its *dhimmī* population was to be restricted accordingly. This interpretation of the *ḥadīth* clearly supported the less tolerant views that proposed prescribing new rules diminishing the rights of the *dhimmī*s wherever large numbers of Muslims were present.

Beside these traditions, ʿAbd al-Razzāq adduces others which support the view that if these *amṣār* had a *ṣulḥ*, the churches could not be touched.[30] It would thus seem that ʿAbd al-Razzāq reflects here a situation of disagreement concerning the question whether a city protected by an agreement (*ʿahd*) could fall into the category of *amṣār al-muslimīn*, which in effect changed its status and imposed many restraints on its *dhimmī* inhabitants, and even – according to some opinions – the destruction of their churches.

Abū ʿUbayd (d. 224 H) also defines the expression *miṣr maṣṣarathu al-ʿarab*. According to him, there are three cases that fall into this category: (1) a place whose people accepted Islam, such as Medina, al-Ṭāʾif, and al-Yaman; (2) any city built by the Muslims in a place that was previously not settled, such as Kūfa and Baṣra; (3) any city conquered *ʿanwatan* and not returned by the *imām* to its inhabitants.[31] He goes on to list those cities that were conquered *ṣulḥan* and those that were conquered *ʿanwatan*. Those conquered *ṣulḥan* include Jerusalem, Damascus, all the cities of al-Shām (but not the surrounding countryside), the cities of al-Jazīra, the Copts in Egypt, and the cities of Khurāsān.[32]

Abū ʿUbayd clearly states that while the *dhimmī*s were not allowed to exhibit any of their religious customs in *amṣār al-muslimīn*, in those that were conquered *ṣulḥan* the *ʿahd* is valid, and the privileges that were accorded to the inhabitants could not be revoked or retracted.[33] Here the definition of *amṣār al-muslimīn* is clear-cut and the terms of cities conquered *ṣulḥan* are non-negotiable, even in the case of changing circumstances.

Al-Shāfiʿī (d. 204 H) in *Kitāb al-umm* defines the term *miṣr min amṣār al-muslimīn* as a city that has been spared and conquered *ʿanwatan*,[34] or

one established in a place that did not belong to the *dhimmī*s.[35] This is contrasted with a city that was conquered *ṣulḥan* and conditions were agreed upon, which were to be respected and maintained. Al-Shāfiʿī ennumerates all the restrictions that apply in *amṣār al-muslimīn* but emphasizes that in a city in which the *dhimmī*s lived separately, or a city that had a *ṣulḥ* agreement allowing such things as the building of churches or the public exhibition of wine and pork, the *amṣār* restrictions were not applicable. Like Abū ʿUbayd, he draws a clear line between the two groups.

There were other interpretations of *amṣār al-muslimīn*. Abū ʿUbayd was familiar with views much less tolerant than his own. Thus, under the title 'What are the *ahl al-dhimma* allowed to establish in *arḍ al-ʿanwa* and in *amṣār al-muslimīn* and what not?' he adduces traditions that could apply to all territories under Muslim rule such as *lā khiṣāʾ fī al-islām wa-lā kanīsa* ('there is no castration in Islam and no church'), or 'it is not fitting for a house of mercy to adjoin a house of chastisement'.[36] The promoters of such views obviously believed that all territories under Muslim rule should be considered *amṣār al-muslimīn*, and that there should be no church where there was a mosque.

Muḥammad b. al-Ḥasan al-Shaybānī (132–87 H) writes in his *Kitāb al-siyar* that the *dhimmī*s are allowed to keep their prayer-houses, and even to rebuild them in any city that was conquered *ṣulḥan*, 'but if the Muslims establish a city (*miṣr*) [for themselves] in that place, they should tear down the synagogues and churches there, but the *dhimmī*s should be allowed to build similar ones outside the city'.[37]

The view represented by al-Shaybānī is that the *ṣulḥ* was valid just as long as it suited the Muslims. Once the Muslims took over a city there was an immediate change of rules; there were no scruples about destroying prayer-houses once the Muslims had established themselves in the city. *Dhimmī*s were also not allowed to go on residing in cities inhabited by Muslims, and were to be expelled just as they had been expelled from Medina, and as ʿAlī b. Abī Ṭālib had expelled them from Kūfa. This is also al-Ṭabarī's view.[38] According to al-Shaybānī, however, they were to be given a place of their own outside the city where they could resume their former way of life.[39]

Al-Sarakhsī (d. 483 H) in his *Sharḥ* to al-Shaybānī's *Siyar* regards any place where public prayers are held and where *ḥudūd* punishments are in effect as a *miṣr*.[40] Al-Sarakhsī's definition follows that of al-Shaybānī, and encompasses, in fact, any city where a Muslim presence has become predominant. On the other hand, he says that a city where the majority

of the population are *dhimmī*s, such as al-Ḥīra, where no public prayers are held and *ḥudūd* punishments are not applicable, the restrictions are not in effect.[41] These definitions have nothing to do with the history of the conquest; rather, they refer to the reality of the time. There are no secured rights and privileges; there is only the matter of a Muslim majority. Once a city changed its character and the Muslim population became predominant, no *ṣulḥ* was valid.

The discussion among Muslim jurists concerning the *dhimmī*s revolves therefore around two main questions:

1. What cities fall under the definition of *amṣār al-muslimīn*? This definition was crucial since the *dhimmī*s of a city so defined might be subjected to restrictions that would not otherwise be allowed. A narrower definition, such as that accepted by Abū ʿUbayd and al-Shāfiʿī, would obviously represent a more tolerant approach, leaving all *dhimmī*s who had been conquered *ṣulḥan* free to live and practise their religion as promised to them in the *ṣulḥ* agreements. A broader definition, on the other hand, such as that adopted by al- Shaybānī, al-Ṭabarī, and al-Sarakhsī, would encompass many more cities, allowing the Muslims to override and annul earlier promises made to the *dhimmī*s, in effect abrogating their ʿ*uhūd*, in any place where Muslim population had become dominant.

2. What is allowed or prohibited in a Muslim *miṣr*? The main problem seems to have been the *dhimmī* prayer-houses. While it was agreed that new churches could not be built, it was clearly a matter of general disagreement whether existing churches in *amṣār al-muslimīn* should be destroyed or not. There are contrasting traditions on this matter. Abū ʿUbayd adduces a tradition attributed to ʿUmar b. ʿAbd al-ʿAzīz that 'you are not to destroy a church, a synagogue or a fire-temple, nor to build a new one'. This appears alongside traditions that condone such actions. ʿAbd al-Razzāq adduces traditions stating that ʿUmar was intent on destroying churches in *amṣār al-muslimīn* as well as others saying that he refrained from doing so.[42]

Ibn Abī Shayba (159–235 H) cites a tradition attributed to 'Ḥasan', most probably Ḥasan al-Baṣrī (d. 110 H) saying that 'he disapproves of letting the prayer-houses (*biyaʿ*) exist in *amṣār al-muslimīn*'. Al-Shaybānī also believed that churches in the *amṣār* should be destroyed (see above). Al-Sarakhsī, on the other hand, cites ʿUmar b. al-Khaṭṭāb as

saying that no new churches should be built, but no ancient ones were to be destroyed.[43]

Some jurists even claimed that *dhimmī*s should not be allowed to live permanently within *amṣār al-muslimīn*.[44] A passage related to this issue is found in an unspecified work by al-Ṭabarī, which is cited by the Mamlūk jurist Taqī al-Dīn al-Subkī and is not found elsewhere. If this passage is indeed authentic,[45] then al-Ṭabarī was also of this opinion, defining *amṣār al-muslimīn* as towns where the Muslim population was predominant. His concrete proof was that ʿAlī b. Abī Ṭālib decided that *dhimmī*s could not live in Kūfa, allowing them to live only in al-Ḥīra, which was populated by *dhimmī*s, or in Zurāra, across the river.[46] Al-Shaybānī claims that *dhimmī*s could buy houses and live in Muslim *amṣār*. Al-Sarakhsī explains this, saying that they were allowed to do so, only as long as they remained a minority, so that they could observe the beauty of Islam.[47] They could not, however, rent houses from Muslims.[48]

THE COMPOSITION OF THE GENERAL *ṢULḤ* DOCUMENTS

The presence of *dhimmī*s in areas populated by Muslims became more problematic as time went on. While immediately after the conquest Muslims were few and far between, by the eighth century they were to be found in many big centres, and in many cases probably formed a predominant part of the population. As areas of contact and friction, both geographical and social, between Muslims and *dhimmī*s were increasing, it was becoming more urgent to find solutions that would be generally acceptable and applicable. It would seem that these changing circumstances created an incentive for formulating a uniform set of regulations applicable to all *dhimmī*s living under Muslim rule. This uniform set of rules had, however, to be formulated and drawn up, and, more important, to be agreed upon.

In addition to the pressing dilemmas of the times, the composition of a general and uniform legal document regarding the non-Muslims towards the turn of the eighth century may also have been inspired by the creation of 'a novel legal system', as has been claimed recently by Benjamin Jokisch.[49] According to Jokisch, this new law code was based on Justinian's *Corpus Iuris Civilis*, and was designed to replace the existing heterogeneous law.[50] This ambitious venture was being led, according to Jokisch, by Hārūn al-Rashīd, and by his leading jurisprudents, Abū Yūsuf and al-Shaybānī. As we have seen, al-Shaybānī was deeply involved in

the issue of the *dhimmī*s, while Abū Yūsuf, as will presently be seen, was engaged in the formation of a general document regarding the *dhimmī*s.[51] Thus the idea of cutting the Gordian knot by creating a single, uniform legal document rather than by making complicated circumstantial differentiations may have been a byproduct of the new codification scheme undertaken by those jurists.[52] It should also be added that all the other figures participating in the argument over the place of the *dhimmī*s in Muslim society, including al-Shāfiʿī, ʿAbd al-Razzāq, and Abū ʿUbayd, were active in that same period, and may well have been aware of the attempt to create such a uniform document. This view is well in line with Cohen's theory regarding the petition form that was given to the *Shurūṭ*. Cohen suggests that 'the literary frame of the Pact of ʿUmar be seen as that of a petition to the Caliph, approved by him in the form of a decree and furnished with directions to the Caliph's delegate to implement it for the Christian petitioners'.[53] Thus, once the decision was made to codify one set of laws pertaining to the non-Muslims, the format chosen, the petition to the caliph, was one that was characteristic of the Muslim administrative system of the time.

How could the aim of drawing up such a uniform document be achieved? Certain restrictions concerning *dhimmī*s who were living in Muslim cities, such as the prohibition on building new prayer-houses, the sale of pigs and wine, and the rules of *ghiyār*,[54] seem to have already been widely accepted at that time among the jurists. Yet there were still many issues that were not agreed upon, such as the definition of *amṣār al-muslimīn*, which in fact decided where these regulations apply, the fate of churches within these *amṣār*, and even the fate of *dhimmī*s living in them.

Moreover, the *ʿuhūd* or *ṣulḥ* agreements given to cities conquered *ṣulḥan* immediately after the conquest constituted a great obstacle. The *ʿuhūd* were commitments that had to be kept. The obligation to observe these treaties is straightforward and unambiguous in Ibn ʿAbbās's tradition, and he is followed by many of the jurists in the eighth and ninth centuries.[55] Although some of the jurists, such as al-Shaybānī and al-Ṭabarī, solved this problem by changing the definition of a Muslim *miṣr*, this was certainly a problematic solution which cannot have been acceptable to all, since it entailed the arbitrary annulment of prior commitments, whenever the Muslims saw fit to do so.

What probably aggravated the situation was the fact that the original *ʿuhūd* were generally not very favourable from the Muslim viewpoint. They were, it would appear, extremely tolerant, mostly just demanding

submission and taxes or other payments in return for an *amān*, which allowed life to go on as before without any restriction or interference.

How could the Muslims solve the problem of these treaties? Could they actually be pushed aside by a document that would arbitrarily annul them? An ingenious solution for this problem was found in the form of a general *ṣulḥ* agreement. While all the original ones were specific agreements given to individual cities and differing from one another, here there would be a document that allegedly represented a set form of *ṣulḥ* agreement applicable to all *dhimmī* cities and settlements under Muslim rule. This agreement would include certain conditions regarding Muslim–*dhimmī* coexistence, which were not included in the original agreements, and, since it would be a general agreement, it could override the individual agreements. The contents of this general *ṣulḥ* agreement had, however, to be agreed upon, and this was no simple task. I would like to show that *Shurūṭ ʿUmar* was, in fact, only one approach of several that were suggested in the course of this process.

I will treat here four different formal versions of such a general *ṣulḥ*. None of these is a newly discovered document; they are all known and cited throughout the literature, yet they are all treated indiscriminately as *Shurūṭ ʿUmar*. Although there are elements common to all versions, there are nevertheless meaningful differences between them; I suggest they each represent a different version of a uniform *ṣulḥ* reflecting the different opinions voiced in this public discussion.

Abū Yūsuf's Version

A significant approach was voiced towards the end of the eighth century by Abū Yūsuf. In his *Kitāb al-kharāj*, a book which represents the formal legal position emanating from Hārūn al-Rashīd's court,[56] there is a version of a general *ṣulḥ* agreement as well as several texts related to the subject. These offer an approach that is quite different from that of *Shurūṭ ʿUmar*. Abū Yūsuf does not cite or mention the *Shurūṭ* at all. Either he did not know the text, whether because it did not exist yet or had not gained wide currency, or he did know it, but chose not cite it because he did not approve of it. Noth refers to Abū Yūsuf in a short note only, concluding that the *Shurūṭ* existed in his days, but that he was not aware of its existence.[57] If this is true, the text must still have been marginal, given Abū Yūsuf's position. Noth does not refer to the substantial differences between the two texts.[58]

Abū Yūsuf presents his position on the subject of the relations between the Muslims and *ahl al-dhimma* in the chapter 'On the churches, synagogues and crosses' ('*Fī al-kanāʾis wa-al-biyaʿ wa-al-ṣulbān*').[59] At the beginning of this chapter he makes the following statement:

> As for what you asked me, O *Amīr al-Muʾminīn*, concerning the matter of *ahl al-dhimma*, and why they were allowed to keep the synagogues and churches in the cities and in the metropoles (*amṣār*) at the time of the Muslim conquest of the countries, and these were not destroyed, and why they were allowed to parade the crosses on their holidays: That is because the agreement between the Muslims and *ahl al-dhimma* was based upon the payment of *jizya*, and the cities were conquered on condition that their synagogues and churches inside the city and outside it would not be destroyed, and that they [i.e. the Muslims] would prevent the shedding of their [i.e. the *dhimmī*s'] blood, and that they [the Muslims] would fight any enemy who attacked them [the *dhimmī*s],[60] and that they [the *dhimmī*s] would [be allowed to] parade their crosses,[61] and that they [the Muslims] would protect them.

The question underlying this text seems to be the grounds on which special privileges were given to the *dhimmī*s, specifically their right to keep their prayer-houses and parade their crosses. Abū Yūsuf states that the present liberties of the *dhimmī*s all emanate from the *ṣulḥ* agreements at the time of the conquest. His wording (how they were allowed to …) suggests that these privileges of the *dhimmī*s had been questioned, and so had to be not only clearly stated, but safely anchored in some early traditions. For this purpose Abū Yūsuf advances a series of historical proofs and texts. First he adduces a version of the *ṣulḥ* agreement made between Abū ʿUbayda b. al-Jarrāḥ and the inhabitants of al-Shām, an agreement which was supposed to have been a uniform *ṣulḥ* agreement for all of the cities of al-Shām, i.e. greater Syria with its five districts including that of Filasṭīn. This agreement, transmitted from Makḥūl al-Shāmī (d. 113/731),[62] was later applied, according to Abū Yūsuf, to the rest of the cities conquered as well:

> Certain learned men related to me from Makḥūl al-Shāmī that Abū ʿUbayda b. al-Jarrāḥ granted a peace agreement to the people of al-Shām upon entering it, on condition that their churches and prayer-houses (*kanāʾisuhum wa-biyaʿuhum*) would be left [standing], that they would not build any new prayer-house or church, that they would be obliged to guide anyone who lost his way, that they would build bridges over the rivers out of their own funds, that they would accommodate any Muslim who passed by for three days, that they would not defame a Muslim or

strike him, that they would not raise a cross amid the Muslims, they would not take a pig out of their dwellings into the courtyards of the Muslims, that they would light the fires for those following Allah's Way (*sabīl Allāh*), that they would not show the weak points of the Muslims (*wa lā yadullū lil-muslimīn ʿalā ʿawra*), that they would not strike their *nawāqīs* before the Muslim call to prayer, or at the times of the Muslim call, that they would not take out their banners (*rāyāt*)[63] on their holidays, that they would not wear arms on their holidays nor keep them in their houses. If they did any of these things they would be punished and it [i.e. the *ʿahd*] will be taken from them. These were the conditions of the agreement (*sulḥ*). But they said to Abū ʿUbayda: set a day in the year for us upon which we can take out our crosses without banners, namely the day of our great holiday. He did this for them and consented to this, so that they could not avoid the fulfilment of the conditions stipulated. The other cities were conquered according to the same [conditions].[64]

The version of the treaty adduced here combines elements appearing in the *ʿuhūd* of specific cities with new elements which contend with the problem of Christian–Muslim coexistence. It is in fact a *sulḥ* treaty adapted to the contemporary situation in which Muslims were living in cities conquered *sulḥan*.

Makḥūl's version of a general *sulḥ* agreement, as cited by Abū Yūsuf, presents a series of stipulations having to do with loyalty, aid, and hospitality to the Muslim rulers, and respect of Muslim religion and ritual. Yet it accentuates the privileges of the *dhimmī*s. Their rights to their prayer-houses and to freedom of liturgy and other practices and habits, i.e. the right to call publicly to prayer at all times other than the *adhān*, or to keep pigs and wine anywhere other than in the immediate vicinity of Muslims. Especially accentuated is their special privilege to hold an open procession with crosses on Palm Sunday, a privilege granted to them, according to this tradition, by Abū ʿUbayda himself in order to establish a relationship of mutual honour and trust. The special emphasis put on the latter privilege may indicate that the sanctioning of the procession with the crosses on Palm Sunday aroused opposition among certain Muslim circles, an opposition which will be referred to later on, and which Abū Yūsuf may have been trying to subdue by referring to such a significant agreement made by Abū ʿUbayda himself.

The same version, with only minor variations, is cited by Ibn ʿAsākir in his *Taʾrīkh madīnat dimashq*.[65] The *isnād* goes back to Isḥāq b. Bishr Abū Ḥudhayfa al-Hāshimī, who is reported by Ibn ʿAsākir to have been active in the reign of al-Maʾmūn (d. 206/821).[66] Ibn Bishr was the author of a book on *futūḥ* and therefore must have been familiar with many traditions of *sulḥ* agreements.

There are several differences in Ibn ʿAsākir's version, the most important being the omission of the story concerning the special permission given to the Christians by Abū ʿUbayda to conduct an open procession with crosses on Palm Sunday. Also, in contrast to Abū Yūsuf's version, Ibn ʿAsākir's version does not cite the edict that their churches and prayer-houses should be left (standing) unharmed (*an tutraka kanaʾisuhum wa-biyaʿuhum*).[67] We thus have here the same text of the *amān* given to the people of al-Shām by Abū ʿUbayda, in two versions reported by two different transmitters whose dates suggest that it was well known around 800 CE. Yet the seemingly minor differences between the two versions are significant, Abū Yūsuf's stand representing a more tolerant and permissive position than that of the parallel version.

Abū Yūsuf later adduces two reports of *ṣulḥ* agreements which support this version of the general *ṣulḥ* transmitted by Makḥūl al-Shāmī. One is a summary of the conditions made by Khālid b. al-Walīd with the ruler of al-Ḥīra, Iyās b. Qabīṣa.[68] Abū Yūsuf briefly reports here that Khālid made a treaty with them agreeing that 'neither a synagogue or church of theirs, nor a fortress of theirs in which they fortified themselves against an enemy will be destroyed; that they will not be prevented from sounding the *nawāqīs*, or from parading their crosses on the day of their holiday; that they will refrain from committing offences, and that they will accommodate those Muslims who passed by them and supply them with food and drinks permitted [to Muslims]'.[69] He then quotes the text of the treaty itself, but the text lacks most of the terms he has just enumerated. It makes no reference to the status of prayer-houses, the *nawāqīs*, or parading the cross, nor for that matter about their fortresses, but emphasizes only the duty not to give aid to a *kāfir* against a Muslim, and not to guide the enemy towards the weak points of Muslim territory.[70] The text cited is significantly different from the other agreement versions in content and in style, and raises a heavy suspicion that it was fabricated by those who wanted to do away with the rights of the *dhimmī*s. Abū Yūsuf, here as elsewhere, seems to be attempting to defend *dhimmī* rights while participating in the general enterprise of standardizing *dhimmī* status.

The second *ṣulḥ* he refers to is that with the people of al-Nakīb and al-Kawāthil,[71] who demanded the same conditions as ʿAnātā. In this agreement, similar elements are adduced by Abū Yūsuf: no church or synagogue is to be destroyed; they will be allowed to sound their *nawāqīs* any time they want, day and night except during Muslim prayer times (exactly the same stipulation as in Makḥūl al-Shāmī's text); they will be allowed to parade their crosses on the days of their holidays (here,

it seems that it is not limited only to Palm Sunday). In return, they will have to accommodate Muslims for three days, and serve as their guides. The same agreement exactly was given, according to Abū Yūsuf, to the people of Qarqīsiyya.[72] Abū Yūsuf underlines the authenticity and validity of these agreements, drawing their veracity and authenticity from the support of the *Rāshidūn*: 'These arrangements of Khālid were not annulled by Abū Bakr, nor were they annulled after Abū Bakr by ʿUmar, by ʿUthmān, or by ʿAlī.'[73] He then goes on to say that in fact, when certain caliphs thought of demolishing *dhimmī* prayer-houses they had to contend with these *ṣulḥ* agreements, and with the clear opposition of the jurists and the Successors. He closes by saying: 'The *ṣulḥ* is effective as it was in the days of ʿUmar b. al-Khaṭṭāb until the Day of Resurrection (*fa al-ṣulḥ nāfidh ʿalā ma anfadhahu ʿUmar b. al-Khaṭṭāb ilā yawm al-qiyāma*). The prayer-houses and the churches were left to them [i.e. the *dhimmī*s], as I informed you.'[74]

Abū Yūsuf emphasizes that he adduces these agreements in order to support his position on the subject of the *dhimmī*s. He openly and repeatedly says that a tolerant approach should be adopted towards them. This attitude had been adopted by the conquerors because they understood that they stand to gain from this policy. 'When the *ahl al-dhimma* saw that the Muslims fulfilled their promises to them, and treated them well, they became adverse towards the enemy of the Muslims and helpful to the Muslims.'[75] In order to substantiate this claim he tells the well-known story, also told by both al-Balādhurī and Dionysius of Tell-Maḥrē,[76] writing in the first half of the ninth century, about the agreement with the people of Ḥimṣ and Damascus, though he does not name a specific city. According to this tradition the Muslims returned the *jizya* paid to them by these cities on the eve of the battle of Yarmūk because they were not sure they would be able to protect the inhabitants of these cities. The latter were so grateful that, according to Abū Yūsuf, they retorted: 'May God bring you back to us and give you victory over them, for if they were in your place, they would not give us back anything, but would take anything we had left, leaving us without a thing.'[77] This, Abū Yūsuf explains, was Abū ʿUbayda's strategy, in order to draw the other cities to him. Once they saw how generous the Muslims were, they all came of their own volition asking for a *ṣulḥ*, on these terms.[78] Al-Balādhurī and Dionysius of Tell-Maḥrē adduce a similar version of the story. It is meant to disseminate a sense of fair play, a tolerant approach towards the *dhimmī*s which reaps its reward in the form of support of the new rulers. Whether the story has any truth in it does not matter for our purposes.

It does reflect a spirit that was apparently prevalent in certain Muslim circles around 800. The disseminators of this story believed, it seems, that a tolerant attitude on the part of the Muslims was the right approach, and that it was the only one that would gain the trust and the support of the *dhimmī* population necessary for the existence of a stable Muslim state in the long run.

Abū Yūsuf further substantiates his view by citing in full ʿUmar's alleged statement on the treatment of the *dhimmī*s.[79] The tolerant attitude advocated by Abū Yūsuf is well supported by this speech: ʿUmar is cited as saying to Abū ʿUbayda: 'You are to fulfil all the terms of the agreement I have given them. As for the parading of the crosses on their holidays, you shall not prevent them from doing this, without banners (*rāyāt*) or standards (*bunūd*), as they requested from you for one day each year. Inside the city, among the Muslims and their mosques, the crosses shall not be shown.'[80]

The main issue tackled here is thus the terms of Christian–Muslim cohabitation. Abū Yūsuf's main goal seems to have been to be a form of coexistence that would be satisfactory to both sides. That is, that Christians would be allowed, as far as possible, to continue leading their lives as they had before as long as they did not openly offend the Muslims by disrupting their *adhān*, or by displaying pigs, wine, or *shirk* in their neighbourhoods. This approach is openly and emphatically attributed by Abū Yūsuf to ʿUmar b. al-Khaṭṭāb, and to the *Rāshidūn* after him. There is no reference whatsoever to the text known as *Shurūṭ ʿUmar*.

Evidence of Restrictions on the *Dhimmīs* during the Period Discussed

As noted above,[81] Abū Yūsuf mentions that attempts made by certain caliphs to take over or demolish *dhimmī* prayer-houses were prevented by jurists who saw themselves bound by the *ṣulḥ* agreements. Abū Yūsuf was in fact contending with problems that were actual and relevant to his time.

There is evidence of attempts at destruction, and of actual destruction, of churches by caliphs and other Muslim rulers in the later Umayyad and early ʿAbbāsid periods. ʿAbd al-Razzāq cites a tradition according to which ʿUmar b. ʿAbd al-ʿAzīz ordered the destruction of both the ancient and the newly built churches in *amṣār al-muslimīn*;[82] and another according to which ʿUmar ordered the destruction of churches, but was challenged by the claim that they were protected under the *ṣulḥ* agreement (*hadha ma*

ṣuliḥū ʿalayhi). Hearing this, ʿUmar withdrew his order and left them standing.[83] The caliph Marwān II plundered and destroyed monasteries and churches in Egypt;[84] in 191 H Hārūn al-Rashīd destroyed the churches in the *ʿawāṣim* – the frontier areas;[85] the anonymous Syriac chronicle reports that during the first half of the ninth century ʿAbdallāh b. Ṭāhir refused to grant the request of the Muslims of Ḥarrān, Edessa (Ruhā), and Samosata to destroy newly built churches and to stop the sounding of the *nawāqīs* since 'the poor Christians have not rebuilt one tenth of the churches which have been ruined and burnt by them [i.e. the Muslims]'.[86] His brother ordered the destruction of churches in Mesopotamia, but was stopped by ʿAbdallāh's orders.[87]

As in the case of the churches, Abū Yūsuf's persistent position in this chapter is in fact a reaction to more intolerant positions on the matter of displaying the cross adopted by Muslim rulers throughout the seventh and the eighth centuries.[88] Both Theophanes and Dionysius of Tell-Maḥrē report that the mosque being built on the Temple Mount by ʿUmar could not be stabilized until the cross was taken down from the church on the Mount of Olives.[89] This story informs us that probably at the time of the Dome of the Rock's building, or soon afterwards, the cross from the Church of the Eleona, or perhaps from the Church of the Ascension, was removed. Michael the Syrian adds here that the Arabs became the enemies of the cross and the persecutors of the Christians because of their veneration of the cross.[90] It is related by Dionysius of Tell-Maḥrē that as early as the time of ʿUthmān b. ʿAffān (r. 644–56) the governor of Damascus 'ordered all crosses to be removed and effaced[91] from walls and streets and places open to view, and he forbade the standard of the cross to be shown on days of feasting and supplication'.[92] The Jews, overjoyed, carried out the decree enthusiastically, causing great distress to the Christians. A supplication to the *amīr* to stop the vandalism was followed by the following statement: 'I merely commanded that the crosses which we always see when we pass through the streets should be effaced.'[93] Michael the Syrian reports that ʿAbd al-Malik ordered that crosses should be taken down and pigs slaughtered. Theophanes reports that during ʿUmar al-Khaṭṭāb's days 'the haters of Christ brought down many crosses'.[94] This phenomenon is confirmed by Ibn ʿAsākir, who adduces a tradition that ʿUmar II b. ʿAbd al-ʿAzīz ordered all painted crosses and images displayed in public to be whitewashed.[95] ʿAbd al-Razzāq cites a tradition concerning ʿUmar b. ʿAbd al-ʿAzīz's policy regarding the Christians in al-Shām. Among other prohibitions pertaining to their dress and appearance there is also a prohibition on displaying the cross on top of their churches.[96]

Abū Yūsuf's strong insistence on these issues underlines the fact that they were matters of great contention among Muslim policy makers. It can thus be claimed that his adamant position stands in opposition to other opinions which condoned or even justified the taking over or destruction of *dhimmī* prayer-houses and the imposition of severe restrictions on *dhimmī* religious liberties.

Abū Yūsuf's Tradition and *Shurūṭ ʿUmar*

The text cited by Abū Yūsuf[97] includes a detailed list of stipulations. It is tempting to consider this, as did Noth,[98] as a text parallel to *Shurūṭ ʿUmar*. Yet the attitude exhibited in this text, as well as in the additional reports adduced by Abū Yūsuf, is quite different from that of the *Shurūṭ*. It is quite evident that given the fact that the prohibitions cited are minimal in number, and limited in their scope, it is a much more tolerant document.

The opening statement, emphasized by Abū Yūsuf again and again, declares that 'their churches and synagogues will not be touched'. This statement may also be inferred from *Shurūṭ ʿUmar*, yet it is not proclaimed explicitly. Not only that, but while Abū Yūsuf's version of the treaty contains a prohibition on building new prayer-houses, in *Shurūṭ ʿUmar* there is an express obligation not to restore those that had deteriorated or fallen into ruin.[99] In addition, many versions of the *Shurūṭ* add a prohibition on congregating (*ijtimāʿ*) or visiting churches located in Muslim neighbourhoods, thus implying that churches that were in areas that had become Muslim could not continue functioning as such.[100]

Most stipulations in Abū Yūsuf's *Kitāb al-kharāj* belong to what Noth calls the stage of the conquest, and suit the conditions immediately following the conquest. There are the obligations to cooperate with the conquerors: provide them with accommodation for three days; build bridges over rivers for them; refrain from insulting or hurting Muslims; light fires for the fighters of Allah's Way; refrain from misleading Muslims; and refrain from carrying arms or keeping them at home. The other stipulations are few. They include the demand not to raise the cross in a Muslim neighbourhood, not to sound their *nāqūs* before the *adhān* or at the time of the *adhān*, or to introduce pork into Muslim areas, and they are clearly meant to avoid offending Muslim feelings. The limitation on crosses is in Muslim neighbourhoods only, while that on the *nāqūs* is during Muslim prayer times only.

It follows that both the *adhān* and the display of pork were permitted anywhere and any other time – as, in fact, Abū Yūsuf himself chooses to emphasize.[101] Although there are seemingly similar demands in *Shurūṭ 'Umar*, in fact they are quite different and exhibit a strict and much less tolerant attitude. In *Shurūṭ 'Umar*, parading the cross and the palm leaves on Palm Sunday is expressly prohibited, and there is an additional prohibition on exhibiting the cross on top of the churches (*wa-an lā nuẓhira al-ṣalīb 'alā knā'isunā*) at all times in all places.[102] No attempt at differentiation is made. As for the *nāqūs*, the demand is to sound the *nāqūs* quietly, in some versions within the church only,[103] at all times.

In addition, Abū Yūsuf's version lacks many of the restrictions that appear in *Shurūṭ 'Umar*, such as those prohibiting *dhimmī*s from raising their voices in the presence of Muslims, entering their dwellings, showing lights on Muslim roads or in Muslim markets,[104] or the demand that they show respect towards the Muslims, rise in their presence, and offer them a seat.[105] Abū Yūsuf's version also lacks the much-expanded concept of the *ghiyār* we find in the *Shurūṭ*. Though he does dedicate a different chapter to this issue (see Chapter 4), he does not attach it to the general *ṣulḥ* document, nor does he expound on it as much as *Shurūṭ 'Umar*. In the latter document *dhimmī*s not only have to appear different from Muslims, but are also prohibited from adopting Muslim *kunya*s, from teaching the Qur'ān to their children, and from having Arabic inscriptions on their seals. *Dhimmī* houses should be lower than Muslim houses (compare al-Mutawakkil's decrees: *dhimmī* graves cannot be higher than Muslim ones).[106]

In short, the difference between the approach in the texts adduced by Abū Yūsuf and that of the *Shurūṭ* is great. The former merely demands from the *dhimmī*s proof of loyalty towards the conquerors, limits their freedom only where it clearly and openly offends Muslim feelings and ritual, and shows consideration towards the *dhimmī*s. The latter, on the other hand, is occupied with drawing a clear and emphatic line between the rulers and the ruled in all areas of social life so that the first always have the upper hand, and this discrimination is not limited to places where Muslim–Christian coexistence causes friction. The *Shurūṭ*, in other words, encumbers *dhimmī* life a great deal more.

Al-Shāfi'ī's Version of the Agreement

Another text that proffers a formal document defining the terms of Muslim–Christian coexistence appears in al-Shāfi'ī's (150–204/767–820)

Kitāb al-umm, which was written slightly later than Abū Yūsuf's trea-
tise.[107] Al-Shāfiʿī's document is a well-known text. It was cited and trans-
lated by both Tritton and Fattal.[108] Tritton even regarded it as 'the most
detailed document'. Yet they both regarded al-Shāfiʿī's text as a version
or an extension of *Shurūṭ* ʿUmar, and neither of them made an effort to
explain the differences between the two texts. Cohen did note the differ-
ence and claimed that 'Shāfiʿī's version is better understood as a juridical
elaboration of the "actual pact" (which probably already existed in the
form we know it) preserving and amplifying its contents with details'.[109]
It is indeed quite certain that Shāfiʿī's version was a response to other such
formulas which were being drawn up. It is difficult, however, to discern
which text al-Shāfiʿī was referring to. In my opinion there were several
versions which seem to have been in existence throughout the eighth cen-
tury and the beginning of the ninth, one of which was al-Shāfiʿī's.

Al-Shāfiʿī's text is entitled: 'If the *Imām* wishes to write a document
of agreement for the poll-tax he should write …'. The next sentence
makes it clear that the following text is a version of the agreement
between the Commander of the Faithful (*Amīr al-Muʾminīn*) and the
Christians of an anonymous city. It is a 'blank' version of a document,
to be filled in at the time of signing by the current *Amīr al-Muʾminīn*,
on the one hand, and the Christians of the city in question, on the other.
The only detail that is filled in is the date: the second of the month of
Rabīʿ al-Awwal. This, according to some Muslim traditions, is the date
of Muḥammad's birth, possibly a symbolic date which enhanced the
significance of the pact.[110]

Al-Shāfiʿī's version seems to have been an intermediate one, its approach
being situated somewhere in between Abū Yūsuf's versions and *Shurūṭ*
ʿUmar. Like the former, it seems to aim primarily at ensuring submission
to Muslim law and protecting Muslim society from direct insult or injury
as well as from unwanted influences of Christian society. As shall be dem-
onstrated below, the pact adduced by al-Shāfiʿī epitomizes the author's
concept of *dhimmī*–Muslim relations. A comparison of his legal discus-
sions concerning the various questions treated in the pact shows that
the opinions presented in the document are representative of the views
expressed by al-Shāfiʿī in his *Kitāb al-umm*.[111] In contrast to the other
versions surveyed, al-Shāfiʿī's text does not claim to go back to to ʿUmar
or the *Rāshidūn*, and in fact does not lean on any *isnād* whatsoever. It
seems that it was composed by al-Shāfiʿī himself, on the basis of texts
and documents familiar to him. It would not be presumptuous, I believe,
to assume that the issues al-Shāfiʿī chose to contend with, the order in

which he brought them, and the space he allotted to each of them, are all significant. While in his legal discussions he could argue extensively and encompass wide issues without being limited, the *'ahd* formula confined him to succinct and unequivocal phrasings, and compelled him to make careful choices.

Al-Shāfi'ī's treaty encompasses a large variety of issues which do not appear in any of the other treaty formulas, yet are discussed by jurists of the period.[112] As a matter of fact, it seems that he wished to encompass all issues with a bearing on *dhimmī*s, not only those relating to daily life and contacts between Muslims and *dhimmī*s. The document he presents may therefore be regarded as representing the main difficulties that lay at the heart of Muslim–*dhimmī* relations, in his view.

The text opens with the validity of the application of Muslim law to *dhimmī*s and the rejection of any other authority: 'You will be subject to the authority of Islam and to no contrary authority. You will not refuse to carry out any obligation which we think fit to impose upon you by virtue of this authority.'[113] It immediately goes on to warn against the defamation of Muḥammad's name, his book, and his religion,[114] presumably with reference to the many *dhimmī*s who defied the Muslim religion and execrated the name of Muḥammad in the eighth and ninth centuries, according to Christian sources.[115]

Other events perceived by al-Shāfi'ī as imminent threats are the fornication, or marriage, of a *dhimmī* male with a Muslim woman, and the subversion of a Muslim from his religion.[116] In comparison, the issue of fornication with or marriage to a Muslim woman is absent from the *Shurūṭ* altogether. The prohibition of causing the apostasy of a Muslim is followed by the obligation: 'We shall not prevent any of our kin from entering Islam if they wish it.'[117] This addition reflects a higher degree of intervention in the communal life of the *dhimmī*s than the prohibition on apostasy from Islam.

There is a group of prohibitions related to Muslim security, an issue which appears in the surrender agreements of the vassal-treaty type:[118] the case of *dhimmī*s who rob Muslims on the highways; *dhimmī*s who assist the enemy by fighting the Muslims or by 'showing the weak points of the Muslims' (*dalāla 'alā 'awrat al-muslimīn*) (also in Makḥūl al-Shāmī's version cited by Abū Yūsuf[119]); and the harbouring of spies.[120] Of these, only the last appears in *Shurūṭ 'Umar*.[121] The *Shurūṭ* also requires the *dhimmī*s to assist the Muslims by giving them accommodation (also a clause in the surrender agreements[122]), and opening the churches for them.[123] This demand, interestingly enough, does not

appear in al-Shāfiʿī's version; there is only a repeated demand, towards the end, not to deceive a Muslim or give aid to their enemies by word or deed.[124]

Another issue treated widely by al-Shāfiʿī is the marketplace. Here the *dhimmī*s might tempt Muslims with wine, pork, blood, carrion, or other foods forbidden to them. The text forbids *dhimmī*s to sell any of these to Muslims under threat of annulment of the sale, confiscations, fines, and punishment.[125] This subject is treated extensively; it is especially revealing that the document reverts to it towards the end, repeating the points and emphasizing that such actions nullify the protection owed to the *dhimmī*s.[126] This is mentioned only briefly in *Shurūṭ ʿUmar*: 'We will not keep pigs in their vicinity and we will not sell wine.'[127] Many versions of the *Shurūṭ* omit the reference to pigs and mention only the prohibition on selling wine.[128] The omission of the issue of pigs, to which both Makhūl al-Shāmī's text and al-Shāfiʿī devote much attention, may indicate that the danger had gradually faded away, or had even become irrelevant, in the sense that the *dhimmī*s observed this prohibition strictly, as the penalty was well known and understood.

This opening section of al-Shāfiʿī's text is much more intent on defending Muslim society than on offending *ahl al-dhimma*. Its author was obviously concerned with the protection of Muslim society from the harmful influences of the *dhimmī*s rather than with dictating the minute details of everyday *dhimmī* life.

The next two paragraphs refer to the legal status of the *dhimmī*s. For al-Shāfiʿī, nothing in the relationship was self-evident. The legal status had to be defined from the beginning: in principle, Muslims allowed *dhimmī*s to retain their social and legal institutions, and refrained from intervening unless specifically asked to do so by litigants. There are certain cases in which Muslim law was applied: when it came to murder or manslaughter, the laws of *qiṣāṣ* and *diya* were put into effect, while in the case of theft the Muslim penalty for theft was applied if the thief was brought before a Muslim judge. One *ḥadd* offence specifically mentioned here as applicable to the *dhimmī*s is the *qadhf* (slander). Here again, it is quite clear that this was an actual and relevant problem at the time, as the author elaborates and explains: 'If a *ḥadd* is due, it shall be inflicted on him; if there is no legal penalty, he shall be punished at discretion so that the laws of Islam may be applied among you in these matters, both specified and unspecified.'[129] It is apparent here that while the essential position was to avoid intervention unless necessary, when it came to *qadhf*, the honour of Islam and its adherents was at stake. Again, as in the previous

cases, the dominant situation is one in which Muslim honour and culture seem to have been under threat.

The next paragraph – not a very long one – is, in a nutshell, a brief summary of the restrictions applied to the *dhimmī*s:

> You may not display crosses in Muslim cities, nor proclaim polytheism, nor build churches or meeting places for your prayers, nor strike clappers, nor proclaim your polytheistic beliefs on the subject of Jesus, son of Miriam, or any other, to a Muslim. You shall wear the girdle (*zunnār*) over all your garments, your cloaks and the rest, so that the girdles are not hidden. You shall differentiate yourselves by your saddles and your mounts, and you shall distinguish between your and their headgear (*qalansuwa*) by a mark which you shall place on your headgear. You shall not occupy the middle of the road or the seats in the market, obstructing Muslims.[130]

It is important to emphasize that this paragraph, listing the restrictions upon the *dhimmī*s, applies only to *amṣār al-muslimīn*. Although the text could also be otherwise understood so far (the reference to *amṣār al-muslimīn* may apply only to the display of crosses), this point is made quite clear when we read al-Shāfiʿī's section dedicated to the *amṣār* a few pages later.[131] It is here that he adduces his unequivocal definition of *amṣār al-muslimīn* as already noted above,[132] explicitly stating that the *ʿuhūd* must be respected under all circumstances. Only in *amṣār al-muslimīn*, he claims, does this list of restrictions apply. Thus, for al-Shāfiʿī, the general *ṣulḥ* agreement does not abrogate the individual *ʿuhūd*; rather, it contains them. His agreement provides a general description of the terms under which *dhimmī*s live under Muslim rule and a list of restrictions pertaining to *amṣār al-muslimīn* (according to his definition) only, a list which does not affect the cities possessing *ṣulḥ* agreements.

A comparison of these restrictions to the other formulae shows the following: his stipulations are less tolerant than those presented by Abū Yūsuf, yet they are less restrictive than the ones appearing in the *Shurūṭ*: here, as in the *Shurūṭ*, crosses are not to be displayed in Muslim cities at all times – there is no exception made for Palm Sunday, as there is in Abū Yūsuf; here, as there, too, the manifestation of polytheism (*shirk*) is prohibited, and al-Shāfiʿī even specifies that *shirk* includes belief in the divinity of Jesus, son of Miriam. (This prohibition does not appear expressly in Abū Yūsuf, yet it is implied in the question of parading the crosses without the standards (*lā yukhrijū al-rāyāt fī ayyām ʿīdihim*) which in all probability displayed images of icons.)[133] The building of

new churches is prohibited, as in Abū Yūsuf and the *Shurūṭ*; yet al-Shāfiʿī explicitly says that if the *ṣulḥ* allowed the building of churches, then it is allowed!

Like Abū Yūsuf, al-Shāfiʿī explicitly says that existing churches in *amṣār al-muslimīn* should not be destroyed. He does not prohibit the gathering of Christians in such churches or the repair of churches that have fallen into ruin, as do most of the *Shurūṭ* texts.[134] In the chapter on the *amṣār* al-Shāfiʿī states that if the Christians live separately in a city of their own, 'they are not to be prevented from building a new church, nor from erecting tall buildings, nor are they hindered from [exhibiting] their pigs and their wine and their holidays and their assemblies'. It is only demanded from them that they will not offer wine to a Muslim who has come to their town.

As for the *ghiyār*, they are quite similar to those appearing in Abū Yūsuf, but in Abū Yūsuf they apply to all *dhimmī*s,[135] whereas al-Shāfiʿī limits them to the *amṣār*, emphasizing their important role in differentiating between Muslims and non-Muslims. Al-Shāfiʿī also adds a prohibition on occupying the middle of the road or seats in the market, the latter appearing in the *Shurūṭ* along with additional stipulations such as respecting Muslims in general, and honouring them in their seats.

This list of stipulations is apparently closer both in content and attitude to the *Shurūṭ* than Abū Yūsuf, yet it applies specifically to the *amṣār*, while the *Shurūṭ* tends to do away with this differentiation, applying many of the restrictions to *dhimmī*s everywhere under Muslim rule. In addition, al-Shāfiʿī's list lacks many stipulations that appear in the *Shurūṭ*, such as the prohibition on using the *kunya*, speaking as the Muslims do, teaching the Qurʾān to their children, possessing seals in Arabic, raising their voices in church, or in the presence of Muslims, taking their funerary processions through Muslim roads, raising voices or lighting fires in funerals, or burying their dead near Muslims. All in all, the author dedicates only a short paragraph in quite a long document to the restrictions applied to the *dhimmī*s.

Al-Shāfiʿī's approach is thus far removed from that of the *Shurūṭ*. All the restrictions he lists are applicable only in the case of Muslim–*dhimmī* coexistence in the same city; and even then, only if it was not agreed otherwise in the *ṣulḥ*. In some cases, therefore, Muslims were bound to accept the building of new churches, and the public exhibition of pigs and wine in their own metropoles, without objection.

This is not true of *Shurūṭ ʿUmar*, where all of these prohibitions are absolute, and there is little differentiation between Muslim and

non-Muslim cities: the *dhimmī*s are expected to adhere to the conditions stipulated in all situations. It should be noted that there are some prohibitions referring only to *amṣār al-muslimīn* which appear in different versions of the *Shurūṭ*, but these are inconsistent most of the time.[136] The text of the *Shurūṭ* does not relate to the specific *ṣulḥ* agreements, nor does it imply that they were still valid. It was the text of the *Shurūṭ* that was applicable to the *dhimmī*s, wherever they were, at all times.

Al-Shāfiʿī's tolerance towards the *dhimmī*s is also expressed in the following sections. One is dedicated to the *jizya*. The payment of the *jizya*, i.e. the obligation enforced upon the *dhimmī* as a condition for the covenant, is parallel in the text to the Muslim obligation to protect the *dhimmī*s:

> We owe you protection, for yourselves and for property which it is lawful for you to hold according to our laws, against anybody, Muslim or other, who seeks to wrong you, as we would protect our own persons and our own property, and we administer justice to you in matters under our jurisdiction as we do with our own property.[137]

Al-Shāfiʿī chooses to elaborate here the rights of the *dhimmī*s side by side with their obligations. In contrast, the text of the *Shurūṭ* refers to the *amān* only in passing: it is something the *dhimmī*s ask for when accepting the *Shurūṭ*, yet the text does not take the trouble to confirm that it was indeed accorded to them.[138] More detailed than Abū Yūsuf's obligations, it is apparent that this is a bilateral agreement rather than a unilateral list of obligations, as in the *Shurūṭ*. In the *Shurūṭ*, as Mark Cohen has indicated,[139] a legal form is used in which the *dhimmī*s ask for the *amān* and provide the list of obligations themselves. The Muslim side in this agreement is tacit and passive. This is exactly the opposite approach from that of Abū Yūsuf and al-Shāfiʿī, where the Muslims are the speakers in the text, and so the active initiators of the pact.

The *Nushāṭiruhum* Version

Another version of the agreement with the *dhimmī*s is cited with minor variations by both Ibn ʿAsākir [140] and Ghāzī b. al-Wāsiṭī.[141] Ibn ʿAsākir claims that this treaty was signed by ʿIyāḍ b. Ghanm with the people of al-Jazīra who assembled in Ruhā; they were familiar with 'the conditions of ʿUmar b. al-Khaṭṭāb to the people of al-Shām (*shurūṭ ʿUmar b. al-Khaṭṭāb ʿalā ahl al-shām*)' and agreed to surrender on the same

conditions. Ibn al-Wāṣiṭī reports that it was given by ʿUmar to Constantin (?) in al-Shām.

This version bears some resemblance to both Makḥūl al-Shāmī's and *Shurūṭ ʿUmar*. Like Makḥūl al-Shāmī's it is quite short and ends with a mutual obligation to observe its terms. The issues covered are also much the same, i.e. the building of churches, the cross, the *nāqūs*, accommodation of Muslims by *dhimmī*s, guiding the Muslims, not keeping pigs in Muslim neighbourhoods, advising the Muslims, not deceiving them, and not assisting the enemy. Both Ibn ʿAsākir's text and Ibn al-Wāṣiṭī's seem to be simple treaties, most probably amplified versions of some of the original *ʿuhūd*. Some of the elements of this version here are reminiscent of the *Shurūṭ*: thus it allows the sounding of the *nāqūs* within the church only – *illā fī jawf al-kanīsa* – exactly the same wording as the *Shurūṭ*; as for display of the cross, Ibn ʿAsākir's version prohibits it totally, as in the *Shurūṭ*, while Ibn al-Wāṣiṭī's version prohibits it in Muslim neighbourhoods only. However, in other parts the *nushāṭiruhum* version uses linguistic formulae that are different from both the *Shurūṭ* and Abū Yūsuf.

Above all, the *nushāṭiruhum* version carries a unique condition, which does not appear in any of the above treaty formulas: half of the *dhimmī* dwellings are to be confiscated ('*wa-ishṭaraṭa ʿalayhim an yushāṭiruhum manāzilahum wa-yanzila fīha al-muslimūn*') and, in Ibn al-Wāṣiṭī's version, the southern wall of any confiscated church is to be turned into a mosque. The confiscation of the southern walls of the churches for conversion into mosques also appears in Ibn ʿAsākir's account of the conditions imposed on Damascus, a few lines above and in exactly the same wording, adding that this wall is 'cleaner and purer' (*liannahā anẓaf wa-aṭhar*).[142] The stipulation regarding the confiscation of half the homes and/or churches is known from the individual treaties,[143] but not from other general treaty versions, and is also echoed in some traditions cited by Ibn ʿAsākir elsewhere.[144] This stipulation makes the *nushāṭiruhum* treaty the most radical and intolerant in its attitude towards the *dhimmī* population.

CONCLUSION

It appears that around 800 CE there were already several developed versions which conveyed a general formula of the *ʿahd* of the Muslims with the *dhimmī*s. All the versions but that of al-Shāfiʿī, who seems to have compiled such a version himself, claimed to draw on ancient and

respectable sources, exhibiting a reputable *isnād* for the document. The purpose of these formulae was to provide a comprehensive document that would define the terms applying to *dhimmī*s living under Muslim rule in general, and in places inhabited by Muslims in particular. Its purpose was to solve the obscurity concerning the definition of a Muslim *miṣr*, the rules that applied in a city defined as such, and the sensitive problem of the individual *ʿuhūd* possessed by the cities conquered *ṣulḥan*, in one fixed formula.

Several different versions, representing different approaches, were drawn up and circulated. Abū Yūsuf's version is the most tolerant, and in fact serves as a basis for his declared position that *dhimmī* rights, which were agreed upon at the time of the conquest, should be respected. Limitations and restrictions imposed on the *dhimmī*s should be minimal, and should apply only should Christians interfere directly with Muslim life and religion. Al-Shāfiʿī's version is somewhat less tolerant, imposing more restrictions on the *dhimmī*s than Abū Yūsuf. Yet he believed that these restrictions should apply only in cases of Muslim–Christian coexistence, and that all previous *ṣulḥ* commitments should be respected. The restrictions form only a small and comparatively minor section in his version of the treaty, and the document bears a mutual character enumerating the rights and the obligation of both sides, and emphasizes the protection of Muslim society from any situation that is injurious to it.

In contrast, the classic text of the *Shurūṭ* is completely unilateral. The obligation of an *amān* on the part of the Muslims can only be surmised from the request, while the *dhimmī*s take upon themselves a long and detailed list of restrictions. The differentiation between Muslim and non-Muslim cities is often obscured, most restrictions being applicable to all *dhimmī*s wherever they are; nor does there seem to be any obligation to the original *ṣulḥ* treaties, as in the case of al-Shāfiʿī. A large part of the restrictions that appear in the *Shurūṭ* no longer function as protectors of Muslim society, but rather as a means of emphasizing Muslim dominance and sovereignty, as opposed to *dhimmī* subordination and subservience.

The *nushāṭiruhum* version represents an even more extreme attitude than that expressed in *Shurūṭ ʿUmar*, condoning the confiscation of half the *dhimmī*s' property.

It seems that at the end of the eighth and beginning of the ninth centuries there was no consensus regarding a general *ṣulḥ* version which would take the place of the original surrender agreements, and that the issue was being debated quite intensively.

   If indeed *Shurūṭ ʿUmar* was already drawn up and circulated by Abū Yūsuf and al-Shāfiʿī's time, it does not seem to have had a prominent position among the known versions at the time. It seems that it was not until the middle of the ninth century – during the reign of al-Mutawakkil – that it came forth and acquired priority,[145] gradually pushing aside other versions, which presented more liberal and tolerant approaches, and finally obtained exclusivity.

3

The Date and the Ideology of the *Ghiyār* Code

This chapter will try and tackle the question of the date and circumstances in which the element of the *ghiyār* (lit. 'distinguishing signs'), that is, the restrictions regarding the distinctive appearance and behaviour of non-Muslims, which form the central component of *Shurūṭ ʿUmar*, was developed.[1] I should like to emphasize that I refer here to the dating of a *structured code or set of rules* rather than this or that particular regulation, which may in some cases have existed from the beginning of Muslim rule. There is no doubt that initially we are looking at a process rather than at a moment in history. Still, there must have been a point in time at which such a code of dress and appearance was first issued.

In this chapter I will attempt to demonstrate that, despite the inclination to cast doubt on their veracity, the Muslim sources are correct in attributing the first code regarding the attire and behaviour of non-Muslims in Muslim society, to the caliph ʿUmar b. ʿAbd al-ʿAzīz, and that this code was indeed part of a planned and deliberate policy which was a result of his ideology regarding the ascendancy of Islam over the other religions.

It should, however, be emphasized that while there are noted ideological differences between the various codes that were in a state of formation around the year 800 CE (see Chapter 2), all of these sources – i.e. Abū Yūsuf,[2] al-Shāfiʿī, and *Shurūṭ ʿUmar* – include a section regarding the *ghiyār* wherein the variations are both minimal and technical.[3] They all insist that the non-Muslims' dress and mount should differ from that of the Muslims, the versions varying slightly from one another in the appurtenances mentioned. It thus seems that, in contrast to matters mentioned above, there were no essential disagreements or arguments regarding the issue of the *ghiyār*.

The sources all point in one direction: they all attribute the creation of the *ghiyār* to the caliph ʿUmar b. ʿAbd al-ʿAzīz (r. 99–101/717–20). ʿUmar II was, according to tradition, the author of an edict containing a list of regulations imposed upon the *dhimmī*s.[4] Yet one can very easily – perhaps somewhat too easily – dismiss this traditional claim as part of the myth in which ʿUmar b. ʿAbd al-ʿAzīz's figure is shrouded.[5] There is no need to develop here his image in later generations as *al-khalīfa al-ʿādil*, 'an exemplar of the Muslim virtues of piety, equity and humility'.[6] A great-grandson of the caliph ʿUmar I b. al-Khaṭṭāb on his mother's side, he was the only Umayyad caliph who was respected, and even revered at times. Being a symbol of Muslim righteousness, he was believed to be the first *mujaddid* (renewer), in a tradition that originated most probably following the death of al-Shāfiʿī.[7] Hawting suggests that ʿUmar II's pious image was a means of attaining continuity from the *Rāshidūn* through the Umayyads to the ʿAbbāsids, and for rejecting Shīʿite claims.[8] It is thus tempting to claim that the traditional attribution of the creation of a code of rules to ʿUmar b. ʿAbd al-ʿAzīz is part of the myth that surrounded the actual person.

However, the sources seem to insist unanimously and coherently that ʿUmar b. ʿAbd al-ʿAzīz published an edict that contained a set of regulations regarding the *dhimmī*s. Antoine Fattal, who tackled this question fifty years ago, reached the conclusion that ʿUmar II had indeed issued this code of rules, adding that the homonymy was no doubt the cause of the confusion that led later to the attribution of these rules which were included in *Shurūṭ ʿUmar* to ʿUmar I.[9] I will try to provide further support for this claim.

THE SOURCES REGARDING ʿUMAR B. ʿABD AL-ʿAZĪZ'S EDICT

The sources citing ʿUmar b. ʿAbd al-ʿAzīz's edict, including Ibn ʿAbd al-Ḥakam, Abū Yūsuf, ʿAbd al-Razzāq and Abū ʿUbayd, Ibn ʿAsākir,[10] and Ibn Zabr,[11] are quite consistent regarding the rules included in this edict, and in fact exhibit a strong linguistic similarity in some parts.

The edict seems to have consisted of two parts: one prohibiting non-Muslims, men and women, from using saddles; the other regulating attire and appearance, including the obligation to cut the forelock, to wear a (leather) girdle, and not to wear shoes with straps, a *ṭaylasān* (headgear, usually a cowl worn over the turban),[12] a *qabāʾ* (a luxurious robe), or a turban (*ʿimāma* or *ʿiṣb*).[13] In additional matters there are variations between the versions of Ibn ʿAbd al-Ḥakam, Ibn Zabr, and Ibn ʿAsākir

on one hand, and Abū Yūsuf on the other, who seems to adduce here a slightly different edict. These, however, are minor, and in any case not contradictory.

Abū Yūsuf[14] and Ibn ʿAbd al-Ḥakam cite almost word for word the section regarding the prohibition on using a saddle (*sirj* or *riḥāla* – the first used when referring to men, while the latter when referring to women), while ʿAbd al-Razzāq employs the same terms. The non-Muslims were allowed to use only the *ikāf* (pack-saddle). According to the edict cited by Ibn ʿAbd al-Ḥakam they were barred from riding with their legs spread out, and could only ride with both legs to one side, as women did:

> And take care that a Christian shall not ride on a saddle but that they should ride on pack-saddles, and that a woman of their women shall not ride saddled, and that she should ride on a pack-saddle, and that they should not sit on the riding-animals with their legs apart, and that they should place their legs on one side. Write them a firm letter regarding this and satisfy me regarding this [matter].[15]

Regarding clothing, Ibn ʿAbd al-Ḥakam (with no *isnād*),[16] the *Shurūṭ al-naṣāra* of Ibn Zabr (870–940 CE), citing a *ḥadīth* going back to Ṣufyān al-Thawrī from Ṭalḥa b. Muṣṣaraf from Masrūk b. ʿAbd al-Raḥmān b. Ghanam,[17] and another version with an *isnād* going back to al-Ḥakam b. ʿUmar al-Ruʿaynī who heard from ʿUmar b. ʿAbd al-ʿAzīz,[18] and Ibn ʿAsākir with versions and *isnād*s identical to Ibn Zabr[19] all cite exactly the same section of the edict:

> ʿUmar b. ʿAbd al-ʿAzīz wrote to the cities of al-Shām that a Christian must always have his forelocks trimmed (*mafrūq al-nāṣiya*),[20] he should not wear a robe (*qabāʾ*), he should always wear a leather girdle (*zunnār min jalad*), he should not wear a Persian mantle (*ṭaylasān*), nor trousers with anklets (*sarāwīl dhāt khadama*) nor shoes with straps (ʿ*adhaba*),[21] he should not ride on a saddle, and if arms are found in their homes they should be confiscated.[22]

Ibn Qayyim al-Jawziyya cites Abū Yūsuf's version of this section almost word for word, with slight omissions and additions.[23]

As for the term used for girdle: while all versions of this *ḥadīth* use the term *zunnār*, Ibn ʿAbd al-Ḥakam, Abū Yūsuf, ʿAbd al-Razzāq and Abū ʿUbayd all use the term *minṭaqa* when citing the edict, rather than *zunnār*. This seems to indicate that the edict was written before the term *minṭaqa* was exclusively allocated to the Muslims and *zunnār* to non-Muslims, and the distinct differentiation between these two types of girdles was

not yet made, as shown in Chapter 5.²⁴ In the paragraph preceding the edict Abū Yūsuf elects to use the term *zunnār* rather than *minṭaqa*, used in the edict itself. Abū ʿUbayd found it helpful to explain: 'they should wear *manāṭiq*, that means *zanānīr*'. This lends additional support to an early date for the edict.

The items of clothing mentioned in the edict are of Iranian origin and, as will be shown below, were in use in caliphal circles in Syria by the first half of the eighth century.²⁵

Additionally, Abū Yūsuf and ʿAbd al-Razzāq also include the prohibition on exhibiting the cross in public, and ʿAbd al-Razzāq adds the prohibition on beating the *nāqūs*, which is mentioned by Michael the Syrian, *Chronicon ad 1234* and Bar Hebraeus as well.²⁶ Yet the heart of the edict seems to be well preserved. In fact, Ibn Zabr and Ibn ʿAsākir who both adduce the same version of the edict note: 'I did not see this addition in what has been passed down to us of *Shurūṭ ʿUmar*; rather, I found it related from ʿUmar b. ʿAbd al-ʿAzīz.'²⁷ It is interesting to note that, unlike many other cases regarding regulations governing the non-Muslims, there is no confusion between ʿUmar b. al-Khaṭṭāb and ʿUmar b. ʿAbd al-ʿAzīz here.

Eastern Christian tradition also supports the claim of the Muslim sources.²⁸ Both Michael the Syrian and the *Chronicon ad 1234* describe in detail ʿUmar b. ʿAbd al-ʿAzīz's treatment of the Christians. Although these sources are quite late, they both derive their information from 'the common source', usually believed to be Theophilus of Edessa, which crystallized before 750.²⁹ Acknowledging his pious reputation, they both go on to say that he had treated the Christians in an especially harsh manner and that he was the initiator of a series of regulations against the Christians. The *Chronicon ad 1234* says: 'Nevertheless he was very hostile to the Christians, more than the kings before him.'³⁰ Michael claims that ʿUmar's attitude towards the Christians was due both to his desire to validate Muslim law and to the wounding defeat suffered by the Muslims in their attack on Constantinople, which filled him with zeal and left him greatly opposed to the Christians. Among other things³¹ the *Chronicon ad 1234*, Michael, and Bar Hebraeus mention the prohibition on raising their voices in prayer, on striking the *nāqūs*, and on riding on a saddle. Michael, citing Dionysius of Tell-Maḥrē, adds the prohibition on serving in high office and on wearing the *qabāʾ* (the latter is not mentioned in *Chronicon ad 1234*), while Bar Hebraeus notes that they were prohibited from wearing the 'dress of soldiers'.

In addition to the Muslim and Christian citations and mentions of the edict, there is also a Muslim tradition that links these regulations

to ʿUmar b. ʿAbd al-ʿAzīz.[32] According to this tradition some people from Banū Taghlib who were Christian Arabs appeared before ʿUmar b. ʿAbd al-ʿAzīz 'wearing turbans (*ʿamāʾim*), in the garb of the Arabs (*ka-hayʾat al-ʿarab*)'. When he understood that they were Christians he at once ordered their forelocks to be cut off, their turbans to be thrown away, and pieces of their cloaks to be cut off and used as girdles. He also ordered that they should not use saddles, only pack-saddles, and that they should ride with both their legs to one side. Admittedly, this tradition is very late, although its *isnād*, if accepted, actually goes back to the days of ʿUmar II himself. This story is echoed in another tradition regarding the meeting of ʿUmar II with the Tanūkh, who were also a Christian Arab tribe.[33] There is a later version of this as well.[34] There was obviously a topos regarding the encounter of ʿUmar II with the Christian Arabs, who posed a special challenge to the Muslims. Both versions go along with the edict attributed to ʿUmar II in claiming that riding on horseback and wearing turbans, *ka-hayʾat al-ʿarab*, was an exclusive Muslim prerogative, since 'Arab' was expected to be synonymous with 'Muslim'. Tensions between Muslim and Christian Arabs were in the air from early days of Islam and, unlike other Christians, Christian Arabs were greatly pressured to convert to Islam, as is testified by Anastasius of Sinai (d. *c.* 700).[35] It is quite plausible therefore that the Muslims insisted that Arabs who did not convert to Islam were not to be allowed to appear in the garb of ruling Muslims, despite their being Arabs,[36] and were expected to abide by the edict of the *ghiyār*, a concept that was on its way to being well established at that time, if indeed the edict cited is genuine.

THE IDEOLOGY BEHIND THE EDICT

The link to ʿUmar b. ʿAbd al-ʿAzīz is supported by more than just circumstantial evidence such as its unanimous attribution to ʿUmar by the sources, and their consistency regarding its contents. It does, in fact, seem to be supported by a consistent ideology which was zealously proclaimed by ʿUmar b. ʿAbd al-ʿAzīz himself. Moreover, the edict is directly attached to the proclamation of this ideology.

This is well demonstrated in two of the *rasāʾil* that appear in Ibn ʿAbd al-Ḥakam's *sīra* of ʿUmar b. ʿAbd al-ʿAzīz. Ibn ʿAbd al-Ḥakam's *sīra* includes a collection of edicts drawn up by ʿUmar b. ʿAbd al-ʿAzīz.[37] The question that arises of course is whether these can indeed be considered authentic.

In his article on the formation and diffusion of ʿUmar II's image Antoine Borrut comes to the conclusion that although a large part of Umayyad history was successively reconstructed throughout the ninth and tenth centuries, many elements relating to ʿUmar's personality and policy do indeed go back to the first half of the eighth. Among many other things, he refers specifically to the information adduced in Ibn ʿAbd al-Ḥakam's *sīra*, where Mālik b. Anas is mentioned in the *isnād* as first among a group of transmitters.[38] Putting together the fact that Ibn ʿAbd al-Ḥakam had an important role in the diffusion of Mālikī opinions in Egypt, and that ʿUmar II is widely mentioned in Mālik's *Muwaṭṭaʾ*, among other things as governor of Medina, Borrut comes to the conclusion that it is indeed very likely that Ibn ʿAbd al-Ḥakam received his information from Medinese Mālikī sources which were well informed about ʿUmar II, and therefore that the information in the *sīra* may be considered trustworthy.[39]

Regarding the edicts themselves: it has already been noted long ago by H. A. R. Gibb that the famous fiscal edict adduced in the *sīra* 'carries every indication of genuineness in its content and linguistic style'.[40]

Additional support for the authenticity of the edicts may be gained from the fact that the *sīra* includes not only documents of an ideological or religious nature that accentuate ʿUmar's pious character and devout-ness, but many edicts relating to mundane matters, which do not serve solely to exalt ʿUmar and to sing his praises. Such, for example, are the edict to *umarāʾ al-ajnād*;[41] the edict to the *khawārij*;[42] a document given by ʿUmar to Manṣūr b. Ghālib which contains instructions regarding his military expedition, including among other things instructions regarding the treatment of his soldiers, rules concerning the behaviour of the army in *ṣulḥ* cities, and his choice of spies;[43] a letter to the governor;[44] another letter to the *khawārij*;[45] and an edict regarding maximum loads of pack animals.[46] Although some of the documents appear in the *sīra* by Ibn al-Jawzī,[47] Ibn ʿAbd al-Ḥakam's *sīra* is abundant in documents not cited by Ibn al-Jawzī.

Michael Cook, who cast serious doubts on some of the early theologi-cal *rasāʾil*, among them also on the anti-Qadarite Epistle of ʿUmar b. ʿAbd al-ʿAzīz,[48] also seems to believe that ʿUmar's fiscal edict and his 'long and pious accession epistle' preceded by the *waṣiyya bi-l-taqwa* (injunction regarding the fear of God), to be discussed below,[49] as well as other epistles in Ibn ʿAbd al-Ḥakam's *sīra* preceded in this manner, are prod-ucts of ʿUmar's time.[50] The accession epistle is not only preceded by the *waṣiyya bi-l-taqwa*, but also includes a long survey of the early history of Islam, called the 'mission topos' by Cook, both typical elements of the

early religious epistles.[51] Crone and Zimmermann point out that the *Sitz im Leben* of these epistles could well be the Friday sermon (*khuṭba*).[52]

Another indication pointing to an early date for the documents in Ibn 'Abd al-Ḥakam's *sīra* is the frequent citation of Qur'ānic passages and the rarity of *ḥadīth*.[53] Given these considerations, there is no real reason, therefore, to doubt the authenticity of the documents cited.

Two edicts in 'Abd al-Ḥakam's *sīra* support the idea that the publication of the edict regarding the non-Muslims was part of 'Umar's promotion of the ideology of the exaltation of Islam and the degradation of the non-Muslims. The concept of the 'chosen people', which was central in Jewish and Christian theology, was adopted by Muḥammad; it is well represented in the Qur'ān, and is even more prominent in later tradition. Its adoption is naturally coupled with the degradation of unbelievers.[54]

One edict is the pious accession epistle. Here 'Umar emphasizes the fact that before they became Muslims, the Arabs were a degraded and contemptible people while the entire world's goods were given to others, until God decided to honour them with his Book and his Prophet.[55] It was only then that 'God exchanged this [misery] for you with the bounty, the victory, the security, and the multitude, and plundered from the others what you could not plunder with your own might if He had left you on your own'.[56] This is supported by a citation from Sura 24:55: 'God has promised those of you who believe and do righteous deeds that He will surely make you successors in the land, even as He made those who were before them successors, and that He will surely establish their religion for them that He has approved for them, and will give them in exchange, after their fear, security.'[57] The Muslims were chosen by God, and thus entitled to all the world's blessings.[58] According to this view, as a result of the gift of Islam the followers of Muḥammad were exalted to this superior position in the world, while the others were deprived of the bounties and advantages that they had previously possessed.

The lowly and humiliating position of those who had been deprived of their previous advantages, according to this theology, needs to be guarded and preserved by Islam. This idea is emphasized in an edict cited by Ibn 'Abd al-Ḥakam which, according to him, was sent by 'Umar b. 'Abd al-'Azīz to his governors. The edict opens with the statement: 'The *mushrikūn* are impure since God has made them the army of Satan.'[59] The term *mushrikūn* here clearly denotes non-Muslims in general rather than pagans, as becomes clear in the following sentences.[60] It goes on to speak about about *ahl al-shirk* who had so far aided the Muslims, levying taxes and serving as officials and administrators

under Muslim rule, a situation which was brought to an end by *Amīr al-Muʾminīn*. The conclusion is that:

> Any official or administrator that I am informed of in your district who is not a Muslim should be dismissed by you and a Muslim should be placed in his stead. The annihilation of their deeds is the annihilation of their religions! It is fitting for them to be reduced to the degree of *humility and contempt* (*dhull wa-al-ṣaghār*) to which God had reduced them. Do that and write to me of the action you took.[61]

It is especially significant that this declaration forms the prelude to the edict we have cited above regarding the riding restrictions.

The next edict, directly following this, concerns the dress regulations:[62]

> ʿUmar wrote to the provinces (*āfāq*): a Christian must be distinguished by his [trimmed] forelocks (*mafrūq al-nāṣiya*);[63] he shall not wear a *qabāʾ*,[64] he shall not walk about except with a leather belt (*zunnār min julūd*),[65] nor [shall he wear] a Persian mantle (*ṭaylasān*), nor trousers with anklets (*sarāwīl dhāt khadama*) nor shoes with straps (*ʿadhaba*); arms shall not be found in his home.

Thus, the *ghiyār* edict is a direct consequence of the exaltation of Islam and the state of humility and degradation that was to be imposed upon non-Muslims.

The declaration that the non-Muslims need 'to be reduced to the degree of humility and contempt (*dhull wa-al-ṣaghār*)' is clearly in concert with the aristocratic ethos adopted by the Muslims from the Sasanians, according to which the nobility must be dressed in appropriate attire, while the lower class should wear the dress of baseness or humility (*libās al-madhalla*) in accordance with its humiliated condition.[66]

There is no question here of trying to achieve mere technical distinction between Muslims and non-Muslims, meant essentially to distinguish the Muslims from the non-Muslim majority (rather than degrade the latter), as suggested by Noth,[67] but rather a fulfilment or implementation of the notion expressed in Qurʾān 2:61 that all non-believers shall be 'struck by humiliation and misery' (*al-dhilla wa-al-maskana*; see also Suras 3:112, 42:45).

The policy executed in this case by ʿUmar II, establishing the superiority of Muslims over the non-Muslims who were still in control in many vital places, tallies perfectly with his image as a *mahdī* in his time, following his great ancestor ʿUmar I, who was called *al-fārūq* (akin to Syriac *pārōqā*: saviour, redeemer).[68]

This same doctrine and structure is repeated 130 years later, in al-Mutawakkil's edict. First he expounds upon the concept of the Muslims as the chosen people, exalted through their faith and religion provided that they fulfil the commandments of Islam. He then goes on to say: 'The Muslims through God's favor by which He has elected them, and the superiority He gave them by the religion He chose for them, are distinguished from members of other religions by their righteous laws, their fine and upright statutes, and their evident proof.' Only then does he proceed to supply the detailed instructions regarding the *ghiyār*, a direct consequence of the distinction made previously.[69]

It should be noted that this concept, usually represented by the hendiadys *al-dhull wa-al-ṣaghār*, used in the edict, is reiterated in the *tafsīr* and *ḥadīth* literature wherein the non-Muslim is justly doomed to a life of misery and humiliation.[70]

Who in reality were the non-Muslims who were required to follow these new regulations? As has been noted already by Fattal, it is quite likely that first and foremost ʿUmar II wanted to prevent the non-Muslims from looking like 'Muslim soldiers', as indeed stated by Bar Hebraeus.[71] Since there were indeed a significant number of newly converted *dhimmī*s who, as demonstrated by Crone, had joined the Muslim army just in order to be given the chance to become a part of Muslim society, it was especially important to be able to differentiate between these and other *dhimmī*s who pretended to pass as such.[72] However, this edict was no doubt relevant to all non-Muslims living in the garrison cities, as well as in the major cities of the *ajnād*, and included women as well as men. The most likely candidates were the *dihqān*s (local notables) and the *kuttāb* (scribes), who were to be dismissed from office according to the edict. However, dismissed or not, they could still be walking around clad in smart Sasanian clothes, exuding status and rank. This had to be mended. The aim of ʿUmar II's edict was to create a state in which only Muslims could appear in dress and paraphernalia signifying social superiority.

THE DATE OF THE ADOPTION OF IRANIAN DRESS CODES

As will be shown in Chapter 5, the concept of displaying social hierarchy via codes of dress and appearance, which forms the basis of the *ghiyār*, was inspired by the Sasanian ethos, where each class had its own dress code. The question that arises immediately following this conclusion is whether these Sasanian ideas had infiltrated the Muslim elites by the days of ʿUmar b. ʿAbd al-ʿAzīz, when the capital was still Damascus,

before it was transferred to Baghdad. The likely assumption would be, of course, that the adoption of such codes would occur only after the ʿAbbāsid revolution.

There is, however, plenty of evidence to support the early infiltration of Sasanian elements into Muslim dress, art, symbols, and attributes in areas that had been previously controlled by the Byzantines.[73] There was extensive adoption of Sasanian elements such as dress, paraphernalia, and status symbols among the Muslim elite during the end of the seventh century and the first half of the eighth. This erases any doubts that may be raised regarding the possibility that ʿUmar b. ʿAbd al-ʿAzīz implemented the Sasanian dress code in order to create a new social order.

Indeed, H. A. R. Gibb has already noted that although the Muslim world turned its back for good on Byzantium and its culture after the shameful defeat at Constantinople, this process was indeed well on its way even before this historic milestone. At this time, 'ideologically, however, the center of Muslim culture and thought was already located in Iraq, and the imperial background and determinants of the Arabs of Iraq were not Byzantine, but Persian, and hostile to Byzantium'.[74]

In conclusion, an examination of the sources supports the traditional claim that it was ʿUmar b. ʿAbd al-ʿAzīz who institutionalized the use of *ghiyār*; this served as a means of establishing the exaltation of Islam and the humiliation and degradation of the non-Muslims. During the eighth century the use of *ghiyār* in order to achieve this end was further entrenched and embedded in Muslim society. This can be concluded from several sources. Thus, Abū Yūsuf, in his prologue to this edict, gives detailed instructions regarding the *ghiyār* that are to be imposed upon the non-Muslims, which are much more detailed than those appearing in ʿUmar b. ʿAbd al-ʿAzīz's edict, which he himself cites. He describes in detail the *zunnār*, the variegated *qalānis*, and their distinct saddles; he mentions the prohibition on wearing turbans (*ʿamāʾim*), and on wearing the hair long, and not cutting the forelocks. He then goes on to cite a letter written by ʿUmar b. ʿAbd al-ʿAzīz to one of his governors, reprimanding him for being too lax, and allowing the non-Muslims to dress and appear otherwise. This, ʿUmar says, is actually a sign of the weakness and impotence of the governors.[75] It is therefore evident that the principle of *ghiyār*, which was instituted in the days of ʿUmar b. ʿAbd al-ʿAzīz, became entrenched in Muslim society despite the fact that its implementation had been inconsistent at certain times in certain places.

Al-Shāfiʿī, writing around 800, in his model pact with non-Muslim subjects, presents the issue of the *ghiyār* in a succinct yet clear manner: 'You

shall wear the *zunnār* over all your garments, your cloaks and the rest, so that the girdles are not hidden. You shall differentiate yourselves by your saddles and your mounts (*surūjikum wa-rakūbikum*), and you shall distinguish your and their *qalansuwa*s by a mark which you shall place on your *qalansuwa*s (*bi-ʿilm tajʿalūnahu bi-qalānisikum*). You shall not occupy the middle of the road or the seats in the market, obstructing Muslims.'[76] It seems that by al-Shāfiʿī's time the regulations regarding the *ghiyār* were quite clear and well known to all, and he felt no need to go into superfluous details or explanations.

While the gradual adoption of Sasanian elements of dress and appearance seems to have begun soon after the conquest, the establishment of the model according to which Muslims formed the upper class while the non-Muslims were the inferior class took place under ʿUmar b. ʿAbd al-ʿAzīz. From then on this code became accepted, and took root in Muslim society despite lapses and periods of laxity in its enforcement. By the last quarter of the eighth century it seems to have been conceived among the ruling Muslim aristocracy as the rule and norm, to be respected and implemented. This code, which seems first to have been laid down at the beginning of the eighth century, was later incorporated into all three known alternative versions of a general document pertaining to the non-Muslims, among them the one that had triumphed: *Shurūṭ ʿUmar*.

4

The Enforcement of *Shurūṭ ʿUmar*

In the previous chapters we tracked the development of formal relations between the Muslim conquerors and the communities of the conquered, from the surrender agreements to the formation of a comprehensive legal document containing rules and regulations regarding non-Muslims around 800 CE. The question that remains is: were *Shurūṭ ʿUmar* enforced, and if so, to what extent?

The idea that these regulations may have remained on paper, or at least were only sporadically and rarely enforced, is not far-fetched. On the contrary, it is common knowledge that laws often fail to be implemented, and scholars concerned with the treatment of *ahl al-dhimma* have mostly held that in the early centuries restrictions enjoined upon *dhimmī*s were irregular and sporadic and, when issued, often not enforced. Two famous episodes – the restrictions imposed by the caliph al-Mutawakkil (r. 847–61), and those of al-Ḥākim (r. 996–1020) – are seen as exceptions in the sense that they were imposed, but typical in the sense that they did not remain in force. Thus Fattal is of the opinion that 'les édits de Mutawakkil tombèrent vite en désuétude. Muqtadir (908–932) en Irak, et Muḥammad al-Ikhshīd (934) en Egypte, essayèrent en vain de les faire revivre.'[1] Goitein states that 'practice must have differed widely from theory', and that 'the bizarre edict on the attire of Christians and Jews promulgated by the caliph al-Ḥākim in a spasmodic fit of religious zeal (or political expediency) proves only that no such discrimination had been customary before'. He goes on to say that on other occasions, when the authorities did enforce restrictions concerning *dhimmī* attire, this was done only in order to extort money from the *dhimmī*s. He does, however, concede that towards the end of the twelfth

century 'the wearing of distinctive marks by non-Muslims was already generally accepted and the stern warning was addressed only to a few transgressors, presumably of the upper class'.[2] Gil believes that even the restrictions of al-Mutawakkil were not enforced, at least not systematically: 'These restrictions were imposed by the rulers in Palestine as well, but to the best of my knowledge there is nothing in the sources indicating their particular application in Palestine. However there is no doubt that they were theoretically imposed in Palestine. Except that here, as elsewhere in the caliphate they were not rigorously observed; this is the only explanation for the fact that they had to be renewed from time to time.'[3]

It would indeed seem that one cannot speak of a consistent policy of enforcement during the first century of Islam, but the situation changed considerably from the second, and more particularly from the third onwards, when a single set of rules was not only promulgated, but its enforcement was attempted by many Muslim rulers.

As demonstrated in the previous chapters, the process of canonization of a comprehensive legal document containing rules and regulations regarding the non-Muslims which began with the formulation of the *ghiyār* came to its completion in the well-known *Shurūṭ ʿUmar*. Before its canonization, the *Shurūṭ* was one of several competing documents. The canonization of the text accepted finally as *Shurūṭ ʿUmar* involved therefore the victory of its supporters over the promoters of alternative views. This victory is attested in the edict that was promulgated and strictly applied by al-Mutawakkil, which reflects in most of its clauses the regulations listed in *Shurūṭ ʿUmar*.[4] From that time onwards, in fact, this code of rules was applied by several rulers, and was the norm by the second half of the ninth century.

RESTRICTIONS UPON THE *DHIMMĪ*S PRIOR TO AL-MUTAWAKKIL

Dionysius of Tell-Maḥrē, the Jacobite Patriarch in the first half of the ninth century, reports that as early as the days of the caliph ʿUthmān (r. 644–56) the governor of Damascus ordered the extirpation of crosses and forbade the public exhibition of the cross during Christian festivals and supplications.[5] It is reported that ʿAbd al-Malik b. Marwān (r. 685–705) ordered the slaughter of all the pigs in the caliphate and the removal of all crosses.[6] His decree regarding the Arabization of the *diwān*s seems to have also entailed an attempt to curtail the employment of non-Muslims in the administration.[7] Some time during the end of the

seventh century or the beginning of the eighth, rulers in Egypt started demanding payment of *jizya* from monks, who had till then been exempt from this payment.[8]

As noted above, the first caliph to have issued an edict containing a set of regulations regarding the *dhimmī*s was ʿUmar II b. ʿAbd al-ʿAzīz (above, Chapter 3). The main part of this corpus of regulations focused on the *ghiyār*. In addition, there was an order regarding the dismissal of non-Muslims from public service. This may have been a clause in this same edict, or may have been published separately. This is in fact the earliest evidence in existence regarding the enforcement of the principle of *khilāf* or *ghiyār*.

Several sources mention that ʿUmar b. ʿAbd al-ʿAzīz also promulgated orders regarding the exhibition of crosses in public[9] and the use of the *nāqūs*.[10] Michael the Syrian also mentions the prohibition on raising voices in prayer.[11] There are conflicting reports in Muslim sources concerning his attitude towards *dhimmī* prayer-houses. Some sources report that he issued an order prohibiting the destruction of churches and the building of new ones.[12] On the other hand, ʿAbd al-Razzāq al-Ṣanʿānī insists in more than one place that he ordered the destruction of ancient as well as newly built churches in *amṣār al-muslimīn*, or those that were taken *ʿanwatan*.[13] Nevertheless, there is information concerning the building of several new churches in the days of ʿUmar b. ʿAbd al-ʿAzīz (r. 717–20).[14] There is also conflicting evidence related to ʿUmar b. ʿAbd al-ʿAzīz regarding the question of the right to bequeath to the church.[15]

The case for accepting these traditions as historical was set out in the previous chapter. Here it may be added that the tradition adduced by Abū Yūsuf regarding the *ghiyār* emphasizes the fact that this was meant to be strictly enforced. It was transmitted by ʿAbd al-Raḥmān b. Thābit b. Thūbān, a well-known Damascene transmitter of his own day, an ascetic (*zāhid*),[16] who heard it from his father:[17]

> ʿUmar b. ʿAbd al-ʿAzīz wrote to one of his governors: 'Regarding the matter at hand: you shall not permit a cross to be manifested, that is not smashed or effaced; a Jew or a Christian shall not ride on a saddle (*sirj*), but shall ride on a pack-saddle (*ikāf*); their women shall not ride on leather saddles (*riḥāla*), they shall ride on a pack-saddle (*ikāf*). Order this expressly, and prevent those who are under your authority [from letting] a Christian wear a *qabāʾ*, a silk garment, or a turban (*ʿaṣb*).
>
> I have been told that many of the Christians under your authority have returned to wearing turbans (*ʿamāʾim*), have given up wearing the girdles (*manāṭiq*)[18] on their waists, and have begun to wear their hair long and to neglect cutting it [i.e. their forelocks: M.L.R.]. I swear that

> if anyone under your authority does so, this attests to your weakness, inability, and flattery, and when they go back to this [i.e. their former costumes and habits: M.L.R.] they know what you are. Look out for everything which I have prohibited and prevent it from being carried out. Goodbye.

The fact that ʿUmar b. ʿAbd al-ʿAzīz protests that the governors have allowed matters to deteriorate could be taken to mean that the rules pre-dated his reign, but he may equally well be referring to an edict that he himself had published in the past.

It seems therefore, that the idea of *ghiyār* struck deep roots in the Muslim domain as early as the second/eighth century, and by the end of the eighth century CE, at the time when Abū Yūsuf was writing his *Kitāb al-kharāj*, had become an accepted concept which, although not always rigorously enforced, was nevertheless considered an official code of dress and appearance to which non-Muslims were required to adhere.[19] The gradual progression of the enforcement of the concept of *ghiyār* specifically, and other restrictions in general (see below), may thus be traced to the eighth century CE and onwards.

Between the time of ʿUmar b. ʿAbd al-ʿAzīz and that of al-Mutawakkil there are several mentions of restrictions and regulations, most of which reappear later in the *Shurūṭ*. Thus, several restrictions were prescribed by the caliph al-Manṣūr (r. 754–75) at the beginning of the ʿAbbāsid period. These include prohibitions on the employment of Christians in public office, on holding vigils for liturgical purposes, and on teaching in Arabic.[20] Al-Manṣūr also removed the crosses from the tops of the churches,[21] ordered that the palms of the *dhimmī*s be marked (a claim not attested elsewhere as far as I know),[22] and imposed the *jizya* on the monks, who had been exempt from it up to that time.[23] The order to remove the crosses existed prior to ʿUmar b. ʿAbd al-ʿAzīz, and dates to the seventh century,[24] while the first systematic attempt to oust non-Muslims from public office was carried out by ʿAbd al-Malik,[25] and the second by ʿUmar b. ʿAbd al-ʿAzīz.[26] Similar prohibitions on raising voices in prayer (in this case vigils) and on teaching in Arabic would reappear later in the *Shurūṭ*.

Such restrictive policies were applied about the same time in Egypt. Ṣāliḥ b. ʿAlī (governor of Egypt 133–4/750–1; 136–7/753–5) prohibited public theological debates between Christians and Muslims, the exhibition of crosses in public, and the building of new churches.[27]

Hārūn al-Rashīd ordered that churches in the frontier areas be razed to the ground, an order which no doubt had to do with the security

situation along the border. As already noted above, particular instructions concerning *dhimmī* appearance, a clear development of ʿUmar b. ʿAbd al-ʿAzīz's edict, were articulated by al-Rashīd's legal adviser, Abū Yūsuf Yaʿqūb (d. 789). Al-Ṭabarī mentions that al-Rashīd ordered that the *dhimmī*s in Baghdad change their appearance in order to differ from the Muslims.[28] However, Abū Yūsuf's edict is a general one and applies to all non-Muslims; there is thus good reason to presume that at the very least it was enforced wherever there was a significant Muslim presence.[29] Between Hārūn al-Rashīd's time and that of al-Mutawakkil there is a report concerning the caliph al-Wāthiq (r. 842–7), who prohibited the use of the *nāqūs* in churches.[30]

The above evidence seems to indicate that although there was no single document, nor a single consistent, accepted, and comprehensive set of regulations regarding non-Muslims, many of the regulations themselves were starting to take shape and were enforced at least, but not only, in the above-mentioned cases which were recorded by historians and preserved. *Shurūṭ ʿUmar* (and the competing documents) constituted therefore an attempt to give one formalized and uniform expression to a host of variegated regulations which were applied sporadically under different rulers.

THE RESTRICTIONS ISSUED BY AL-MUTAWAKKIL

The first established set of restrictions known to us is, of course, that which was promulgated by al-Mutawakkil (r. 847–61). For the first time the caliph issued an organized set of restrictions to be applied to the *dhimmī*s.

This decree included the requirement to wear yellow as a distinguishing colour (see details below); to wear the *zunnār*; to ride on saddles with wooden stirrups affixed to two pommels at the rear; to attach two buttons to the *qalansuwa*, and to attach yellow patches, front and back, on the clothes of slaves and the lower-class *dhimmī*s; to destroy new prayer-houses (*biyaʿahum al-muḥdatha*); to seize a tenth of their residences; to nail wooden images of devils (*shayāṭīn*) to their doors; to prohibit the employment of non-Muslims in the government; to prohibit their children from studying in Muslim schools or to be taught by Muslims; to prohibit public processions including on Palm Sunday, and to level graves that resemble those of Muslims.[31] In contrast to the opinion that this was an isolated case, I will proceed to demonstrate here that these restrictions in general, and the *ghiyār* in particular, were issued again and again in the following period. In fact, once clearly established, this set seems to have

become a paradigm for later caliphs and rulers to follow. Yet, although the principle was now unambiguous, and its enforcement attempted by many a ruler, it nevertheless needed to be incessantly reiterated, since the non-Muslims continuously attempted to ignore these humiliating restrictions, and seem to have taken every opportunity to evade these distinguishing marks and to adopt the respectable attire and paraphernalia of the Muslims.

The sources mention several caliphs who issued similar edicts. Al-Muqtadir (r. 908–32) is reported to have issued a set of regulations concerning the employment of *dhimmī*s in public service, the distinctive honey-coloured attire, and other *ghiyār*.[32] Al-Maqrīzī reports that Jawhar, the *wazīr* of the Fāṭimid caliph al-Muʿizz (r. 953–75), imposed the regulations of the *ghiyār* upon the *dhimmī*s.[33] Most famous of all is, no doubt, al-Ḥākim, who, it should be admitted, went to much greater lengths, not only inflicting the restrictions upon the *dhimmī*s ruthlessly and mercilessly, but also demolishing all synagogues and churches, and confiscating property.[34] The question is, of course, whether these were indeed enforced, or whether they were merely a dead letter.

Actual Enforcement of Issued Restrictions

The decrees issued by al-Mutawakkil are well known, and there is no doubt that this caliph did indeed issue a detailed decree regarding the *dhimmī*s. Yet information concerning the enforcement of the decree is partial and insufficient. What evidence do we have for its enforcement then?

On the Muslim side, al-Ṭabarī reports that in Muḥarram 239 (12 June–11 July 853 CE) al-Mutawakkil ordered that *dhimmī*s affix two yellow sleeves (*dhirāʿayn*) to their outer cloaks. This does not exactly follow the edict as cited by al-Ṭabarī himself earlier, according to which the more affluent of the non-Muslims, including the merchants and the secretaries, were to wear yellow hoods (*ṭayālisa*), yellow turbans (*ʿamāʾim*), and their women yellow mantles (*izār*), while 'those of their humble followers beneath these in station, whose circumstances prevents them from wearing hoods' should affix two yellow patches to their cloaks, front and back.[35] Moreover, in the preceding description of the edict the yellow patches serve as the distinguishing sign for the slaves (*mamālīk*),[36] while nothing is said about sleeves. In Ṣafar (12 July–9 August) of the same year he ordered that they restrict their mounts to mules and donkeys, and avoid riding and pack horses.[37] Ibn al-Jawzī recounts that in 236/850–1, following the general edict issued in Shawwāl 235/850,[38] Christians were

ousted from public office; they were also discharged from the *wilāyāt*, and were in general no longer to be employed in anything related to the affairs of Muslims.[39] In agreement with al-Ṭabarī he relates that in Muḥarram 239/853 the order that non-Muslim men should wear honey-coloured patches on their gowns and overcoats, and that women should wear honey-coloured veils, was enforced; in Ṣafar that year the *dhimmī*s were prohibited from riding horses and were restricted to using donkeys and mules.[40] In 240/854–5 it was announced in public that the children of the *dhimmī*s were to be taught Syriac or Hebrew, and were forbidden to learn Arabic.[41]

Severus b. al-Muqaffaʿ reports that al-Mutawakkil ordered all churches to be demolished, a claim which is not corroborated elsewhere; forbade *dhimmī*s to wear white, and ordered that they should wear only dyed garments so that they might be distinguished among the Muslims (this evidence relates to the issue of differentiation through colour, though it does not name a specific colour, but does not mention any of the other items of the *ghiyār*); commanded that frightful pictures should be made on wooden boards and be nailed over the doors of the Christians; and that *dhimmī*s should not serve 'in the government of the *sulṭān*'. Severus also notes that he forced many to convert to Islam, a fact not mentioned elsewhere.[42] The Jacobite chronicler Gregory Bar Hebraeus mentions the new requirements concerning appearance, the prohibition on exhibiting crosses in processions on Palm Sunday, the destruction of new churches, and the appropriation of partial areas of large churches. He also notes that similar restrictions were imposed upon the Jews.[43] These two last sources are general and brief, and it is difficult therefore to corroborate them with the specific details of al-Ṭabarī.

A chronicle written in Samaria at the time of the events by members of the local Samaritan community provides substantial new evidence on this issue.[44] This is a continuation of the Samaritan chronicle of Abū ʾl-Fatḥ. It appears in a unique manuscript found in the Bibliothèque Nationale and was known to Vilmar, the first editor of Abū ʾl-Fatḥ's chronicle. Due mainly to linguistic considerations, Vilmar chose not to publish this manuscript, which continued up to the time of the caliph al-Rāḍī (r. 934–40), and so this part of the chronicle has until now been disregarded, in spite of its importance as a well-informed source based on an eyewitness account. According to this chronicle al-Wāthiq[45]

was succeeded by his brother Jaʿfar [al-Mutawakkil], who afflicted the world with every kind [of affliction];[46] he ordered at first that people

should wear distinguishing clothes, except for the black and the blue, which he reserved for his faith. He ordered that there should be no scribe or public official (*ʿāmil*) except from his faith, and that there should be no one in charge of a fort or holding any kind of position except from his faith. There were Christians whom he cast out, and he appointed all the officials from his faith. He ordered that no one should wear a garment with an embroidered edge (*ṭirāz*)[47] except the members of his faith (*ahl millatihi*), and no one should ride a horse [except the members of his faith]. He commanded that every *dhimmī* should wear a distinguishing sign in front and back, and that he should not sit in front on a velvet-like sofa,[48] that no one except the members of his own faith should have iron stirrups[49] – the rest [would have] wooden ones. He ordered that every grave resembling the graves of the members of his faith be destroyed,[50] and the grave of the *raʾīs* Nethanʾel[51] was destroyed. Before that occurred, he ordered that every *dhimmī* should afix to his door a wooden idol bearing the label of 'idol' (*wathan*)[52] (240).

The Samaritans who resided in Nablus, may God remember them favourably, having presented the governor (*wālī*) of Nablus with something [i.e. a gift], asked him to grant them a delay so they could go down to Ramla, and he agreed to that. [Now] in Dājūn[53] there was a man possessed of dignity and power, (242) whose word was accepted by the ruler (*sulṭān*), by the name of Abū Yūsuf b. Dhāsī, may his memory be forever blessed. He called on the governor and petitioned him, and he [the governor] told him that it was not possible to annul the order of the king but [said]: 'Choose for yourself an image which is not offensive.' He chose the image of a candelabrum that we make; it was put in an envelope, and he stamped it and sent it to the governor of Nablus. [The governor] commanded that a Samaritan should only make [an image] like that which Yūsuf b. Adhāsī made – [that is] a candelabrum. They rejoiced greatly in this and profusely thanked God, may He be praised and exalted. As for those [Samaritans] who were in [the province of] Jordan – this [concession] was not granted to them, and an image was made [by them] like the other peoples according to the law.

In his days it was decreed that a man shall not raise his voice in prayer, and shall not raise voice in …,[54] a funeral shall not be seen, and a *dhimmī* shall not lift his face to a Muslim's[55] face in order to speak or respond to him.

Unlike the other non-Muslim sources cited, the *Continuatio* gives us a nearly complete list of al-Mutawakkil's restrictions. Many of the restrictions overlap: thus the *Continuatio* mentions the requirements of the *ghiyār*, and specifically the patches in front and rear; the prohibition on the use of iron stirrups; the prohibition on riding horses (which is mentioned by al-Ṭabarī,[56] but not in the actual edict as cited by him); the prohibition on holding public office; the prohibition on holding public funeral processions; the order to level all *dhimmī* graves so that they

do not resemble Muslim ones; the order to affix idols to the doorposts. Missing from the description are the destruction of new prayer-houses, the prohibition on studying in Muslim schools, and the seizing of a tenth of their residences. It may be that the latter were not mentioned because they may not have been applied or relevant in Samaria, or there is always a possibility that they were overlooked by the writer.

On the other hand, the *Continuatio* includes many additions not found elsewhere. Although the items included in the *ghiyār* (such as *zunnār*, yellow colour, shoes, headgear) are not specified and seem to be self-understood by the writer, the chronicle mentions that black and blue were reserved for the Muslims only, as was the embroidered edge of the cloak – the *ṭirāz*. In addition, there are restrictions mentioned which are a part of the *Shurūṭ*, including the prohibition on raising the voice in prayer, on sitting in the respectable seats (=ʿwe shall rise from our seats when they wish to sit'), and the requirement to talk to Muslims with eyes cast down (=ʿwe shall show respect toward the Muslim').[57]

The report given here concerning the restrictions imposed upon the *dhimmī*s during the days of al-Mutawakkil is very detailed and of considerable significance. The Samaritan text confirms unequivocally that not only were *dhimmī*s in provinces such as Palestine and Jordan familiar in detail with these decrees, but that the restrictions were indeed enforced quite strictly. This is well in line with al-Mutawakkil's letter cited by al-Ṭabarī and in *Shurūṭ al-naṣāra*,[58] which demands that 'what they do shall be inspected to ensure that the orders of the Commander of the Faithful are carried out by their clear compliance. The inspector should be able to spot compliance readily, it being immediately apparent … You shall instruct the officers concerning the orders of the Commander of the Faithful, and do so in such a way that they are motivated to carry out their examinations as commissioned.'[59]

This, incidentally, is well in line with the edict of ʿUmar b. ʿAbd al-ʿAzīz to his governor which ends with the directive that 'he shall watch out for anything that I have prohibited and stop those who commit it'.[60]

This enforcement of the orders is well demonstrated by the practical consequences related in the Samaritan chronicle such as the story of the image that the *dhimmī*s had to attach to their doorposts. The Samaritans of Palestine went to great trouble to evade this order, which in their eyes was equivalent to idol worship; nonetheless, they had to settle for a compromise – the use of an image of a candelabrum. The Samaritans of Jund al-Urdunn were not even granted this concession by their governor, and had to abide by the original decree. Another example of the strict execution of the decrees is the levelling of the grave of the Samaritan

head Netanʾel because it resembled a Muslim grave. It may be presumed that these decrees were imposed with equal severity upon all the other *dhimmī*s in the *jund*s of Filāsṭīn and Urdunn as well. Moreover, it can be deduced safely that this would have been the situation all over the caliphate. It seems that it can no longer be claimed that al-Mutawakkil's regulations were not fully enforced.

THE LONG-LASTING ENFORCEMENT OF AL-MUTAWAKKIL'S RESTRICTIONS

It nevertheless remains to be asked whether this policy had any real effective long-lasting influence after al-Mutawakkil's days. It has been noted above that there are succinct references to similar restrictions imposed by al-Muqtadir, by al-Ikhshīd,[61] and by al-Muʿizz, before we come to al-Ḥākim's notorious decrees. Yet these were not regarded seriously by scholars, as already emphasized. Fattal, for example, adopted ʿArīb b. Saʿd al-Qurṭubī's[62] evaluation that al-Muqtadir's restrictions concerning the prohibition on employing *dhimmī*s in government did not last, and applied this evaluation to the whole set of prohibitions. This cannot actually be deduced, as al-Qurṭubī refers specifically to this one decree which was not adhered to in Cordova, while Ibn Taghrī Birdī, who refers not only to this prohibition, but also to the elements of *ghiyār*, does not state that these prohibitions were not carried out in practice.[63] Thus, although Fattal rightly emphasizes the fact that the prohibition on employment was not adhered to, this relates to a specific and very problematic issue. It is well known that the prohibition concerning the service of *dhimmī*s in public office was the most difficult to enforce. This was due not only to the fact that Christians and Jews had so much experience and knowledge in the field of administration and management that they had become almost irreplaceable, but probably also to the reluctance of the rulers to replace these loyal and efficient officials who, in contrast to their Muslim counterparts, posed no threat to their rule. This is well documented by Ibn Qayyim al-Jawziyya, Ibn al-Naqqāsh, and al-Qalqashandī, who focus almost obsessively on this issue.[64]

Here, too, the Samaritan chronicle supplies us with material evidence that proves wrong the accepted opinion that al-Mutawakkil's decrees were but a short-lived episode characteristic of their initiator, and that attempts made by other rulers to impose such regulations were not put into effect, and ended in total failure. It gives us new information which shows that al-Mutawakkil's decrees were in fact a turning-point.

Although his restrictions had not automatically stayed in force, they were renewed in an amazingly short time.

The information concerns Aḥmad b. Ṭūlūn, the founder of the Ṭūlūnid dynasty, who ruled Palestine between 878 and 884:[65]

> He [i.e. Ibn Ṭūlūn] oppressed the people in every way. In the second year a governor (*wālī*) came to [rule over] the people on his behalf and oppressed [them] in every way; he ordered that the *dhimmī*s should wear distinguishing signs (*ghiyār*), engraved [lit. made] idols (*awthān*) on their doors, [ordered that] a *dhimmī* should not raise his head in the presence of a Muslim [lit. *goy*] and that he should not raise his voice in prayer; and that he should not blow the horn; he also destroyed a synagogue of the Jews. All the religious communities were in fear of him, lest he extend [his] hand to their houses of worship so as to put them to his own use. He prohibited the drinking of wine[66] and oppressed [them] in every possible manner.

Although more succinct than its predecessor, this set of regulations is almost identical to that of al-Mutawakkil, the distinctions in appearance of the *dhimmī*s being encapsulated under the title *ghiyār*. There are two regulations missing: one, concerning the funerals, probably just due to carelessness of the author since its parallels, such as blowing the horn or raising the voice in prayer, are present; the other – the order concerning the levelling of the graves – probably because after al-Mutawakkil's actions Samaritan graves no longer resembled the Muslim graves, but were built without tall tombstones in the first place. An additional decree appearing here is the prohibition on drinking fermented drinks, which was not listed among al-Mutawakkil's restrictions. This prohibition, rooted in the edict of ʿUmar b. ʿAbd al-ʿAzīz, and prohibiting the Muslims from drinking wine,[67] may have resulted in a prohibition on the possession of wine in Muslim cities, as is claimed by Theophanes.[68] In al-Shāfiʿī's *Kitāb al-umm* there is a prohibition on selling Muslims fermented drinks,[69] while in *Shurūṭ ʿUmar* the prohibition seems to be on its sale altogether.[70] Thus, it may well be that by Aḥmad b. Ṭūlūn's time this ban on wine was already being imposed – not only upon Muslims and non-Muslims in the *amṣār*, but even upon non-Muslims living in the more neglected agricultural periphery of the caliphate.

There seems to be no other evidence regarding Ibn Ṭūlūn's restrictions. In fact, his image in the sources is a positive one,[71] and were it not for this one source there would have been no reason to suspect this. The text, written by members of the local community, clearly shows, however, that these measures were imposed upon the population and strictly enforced.

It can be safely assumed that they were enforced in the same manner in all provinces under Ibn Ṭūlūn's jurisdiction. Ibn Ṭūlūn's restrictions are therefore a case in point which demonstrates that one cannot deduce from the silence of the sources that the restrictions were not applied.[72]

In fact, although it is not part of the current discussion, it should be noted that the chronicle gives a detailed description of Ibn Ṭūlūn's rule, especially in Palestine, the author complaining not only about the restrictions but about the oppressive behaviour of his emissaries in general.[73]

The new evidence of the *Continuatio* of the Samaritan Chronicle, provided by *dhimmī*s living in a provincial area of the caliphate, demonstrates that not only were al-Mutawakkil's decrees not forgotten, but that they were strictly enforced by another Muslim ruler shortly after al-Mutawakkil's death. This leads us in a rather different direction than the one taken until now. The additional references we have to al-Muqtadir (r. 908–32), al-Ikhshīd (r. 934), al-Muʿizz (r. 953–75),[74] al-Ḥākim (996–1020), al-Mustanṣir (r. 1086) in Egypt,[75] and al-Muqtadī (r. 1091),[76] and the Seljuk sultan Maḥmūd in Baghdad in 1121[77] who also enforced similar decrees should thus be regarded carefully, rather than being waved away and discarded nonchalantly. While the information about the first three is minimal, the evidence in the rest of the cases is detailed and impressive. Following the descriptions of the enforcement of al-Mutawakkil and Ibn Ṭūlūn's decrees, there is no reason to suspect the more succinct references. There is in fact no need to continue and review the history of the enforcement, as this has been done quite thoroughly by Tritton and Fattal.[78] It seems therefore that from al-Mutawakkil's days onwards, the regulations published by him were to become a norm which the caliphs and other rulers within their orbit strove to impose and enforce.

Occasional mentions demonstrate that some of these restrictions were considered an accepted norm by the end of the ninth and during the tenth centuries. Thus, Elias of Nisibis reports that in the year 271/884–5 the people of Baghdad rioted against the Christians because they rode on horses.[79] Al-Muqaddasī, in the second half of the tenth century, notes that in Shīrāz 'you will not see Magians with *ghiyār* and the wearer of the *ṭaylasān* has no grandeur. I have seen wearers of the *ṭaylasān* drunk, and even beggars and Christians wearing it.'[80] This last piece of evidence carries a double message: al-Muqaddasī obviously considered this scandalous behaviour: Magians should definitely wear *ghiyār*, and Christians should not be wearing the *ṭaylasān*; in Shīrāz, however, this is not the accepted norm. It can be deduced here that what was already an

unquestioned norm in Egypt, Syria, and Mesopotamia was not quite so in the small provincial town of Shīrāz, which at that time was only beginning to gain importance.

Another issue brought to light by the evidence is that although the term *ghiyār* and the principal demands included in it – such as the *zunnār*, the patches, and the prohibition on riding horses – were well understood, there were nevertheless provincial variations, as well as changes concerning details such as colours that were forbidden to the *dhimmīs* – an issue not mentioned in al-Mutawakkil's edict or the *Shurūṭ* (white in Egypt, black and blue in Palestine; shoes with or without straps (above), or the requirement to wear two different shoes;[81] the demand to hang a medallion with the word *dhimmī* around the neck,[82] a bell, or a figure in the form of a cross for a Christian or a calf for a Jew.[83] These variations support the verisimilitude of independent enforcement of the *ghiyār* in various regions.

However, although enforcement of the *ghiyār* thus seems to have been more significant than has been traditionally assumed, this does not mean that from al-Mutawakkil's days onwards these regulations were an integral and non-negotiable part of *dhimmī* life. It is quite understandable that *dhimmī*s felt more restricted and humiliated than they had been before, and that they fought against their new situations, testing and trying the determination of each ruler to enforce the restrictions now and again. It may also be presumed that some rulers were indeed more lenient than others, especially when it suited their internal or external political ends. There are ample examples of allowances and concessions concerning the building of prayer-houses, the employment of *dhimmī*s in government bureaux[84] etc. after al-Mutawakkil's days.[85]

Nevertheless, though the rules were often bent in favour of a more lenient policy, and these regulations were often enough disregarded and evaded, they were never annulled, and could be imposed or enforced strictly at any moment. At the ruler's will, their enforcement could also be retracted. This is well exemplified by the behaviour of both al-Ḥākim and Ṣalāḥ al-Dīn, who first imposed these regulations and then retracted them.[86]

The evidence thus shows that from al-Mutawakkil's time onwards these regulations had become the rule in the lands controlled by the caliphs in al-Shām, in Iraq, and in Egypt and its dependencies. What happened in other parts of the empire is not clear. Al-Muqaddasī's reference to Shīrāz above may indicate that in areas that were further out the process occurred at a much slower pace. The Maghrib and Spain may also have adopted these restrictions late in the day.[87]

The set of regulations which began with the ideology promoted and applied by ʿUmar b. ʿAbd al-ʿAzīz, and struck deep roots from the second half of the ninth century onwards, continued in fact to expand, becoming more and more elaborate and more strictly enforced with time, as can be seen later on in the Mamlūk period, when Ibn Qayyim al-Jawziyya wrote his opus magnum, *Aḥkām ahl al-dhimma*.

5

The Provenance of the Modes
of Subordination of Non-Muslims

The Muslim conquest entailed the subjugation of large populations throughout the conquered territories. As we have seen in the first chapter, the Muslims were at first generally content with the submission of the local inhabitants and their agreement to pay tax, and in return allowed them in most cases to continue their lives as before.[1] However, as time went by the growing presence of Muslims in cities that had previously been occupied solely by non-Muslims necessitated certain changes and adaptations in those cities where Muslims and non-Muslims lived side by side. This led, as we have seen, to the drawing up of *Shurūṭ ʿUmar*, a universal document which gradually replaced the former diversified treaties.

While the question of the enforcement of the *Shurūṭ* has been widely discussed, the question of its provenance has been neglected. The aim of the present chapter is to try and trace the origins of the various components of *Shurūṭ ʿUmar*. The principal question is therefore: what were the sources of the various elements of this document that defined the position of non-Muslims in this newly emerging society? My assumption is that an examination of the origin of the notions, concepts, and terms of which this document is made up will lead to a better understanding of its social significance and goals.

The 'Pact of ʿUmar' was probably drawn up somewhere towards the year 800 CE.[2] In the period following the conquest, throughout the seventh and eighth centuries, the Muslims underwent a long process of adaptation to their new status as rulers. This process was accompanied by a

See translation of *Shurūṭ ʿUmar* in Appendix I.

profound process of acculturation which dictated the structure and nature of the new society that was now being shaped. At the time of the forging of the *Shurūṭ* this process was well under way, as is clear in the *Shurūṭ* themselves. As we shall presently attempt to demonstrate, many of the elements of the *Shurūṭ* originated in notions and concepts that were adopted by the Muslims from the cultures of the conquered societies and integrated into Muslim culture and legislation. Thus, among many other things, the Muslims adopted certain social concepts that, as shall be shown, were to have great significance regarding the place that was allocated to non-Muslims in the new social order that was being created.

There has not been much discussion of the social significance of *Shurūṭ ʿUmar*. Most probably as a result of the views expressed by the classical jurists, it seems to have been taken for granted that the Muslims wanted to impose their rule and subjugate the non-Muslims. Among modern scholars, only Albrecht Noth has raised the question of the purpose of the *Shurūṭ*.[3] It was he who asked whether its purpose was, in fact, to humiliate the non-Muslims. After an exhaustive analysis of the document, he concluded that its intention was not to humiliate, but rather to differentiate between Muslims and non-Muslims. He reasoned that the status of the Muslim conquerors as a small minority among the conquered population caused a need for a means of differentiation between the two groups. *Ghiyār*,[4] or 'distinguishing signs', is indeed the term used in Muslim literature with reference to the demand made upon non-Muslims regarding the need to distinguish their appearance from that of Muslims. The issue of the cultural origins of the *ghiyār*, a central element in *Shurūṭ ʿUmar*, and its significance, will be extensively discussed in this chapter.

What then were the origins or the sources of inspiration for creating such a document? As shown, the initial surrender agreements made between the Muslims and the conquered populations were designed after a well-known model that had existed for many centuries before the Muslim conquest. Were there also parallel documents which imposed restrictions on minorities or other distinct groups in the societies of the Near East before the Muslim conquest?

THE STATUS OF MINORITIES IN ANCIENT
NEAR EASTERN SOCIETIES

In an attempt to discover the origins of the notions behind the *Shurūṭ*, my initial research focused on previous legislation defining the status of

minorities in ancient Near Eastern societies.[5] A general survey shows that all aliens in ancient Near Eastern and Classical societies had to acquire the fundamental status of resident alien, which granted them their basic protection. Thus we have the Akkadian *ubārum*, the biblical *ger*,[6] the Athenian *metoikos*, the Roman *peregrinus*, or *ordo libertinorum*,[7] and the Arabian *jār*,[8] *mawlā* (client), and *ḥalīf* (guest ally).[9] Resident aliens were subject to many restrictions. Thus, in the ancient Near East there seem to have been strict limitations on the ownership of land,[10] and resident aliens were not entitled to the abolition of debts or to the abolition of servitude as a result of debts.[11] In general, a resident alien was considered of inferior status and, according to a common proverb, 'a resident alien in another city is a slave'.[12]

More is known about the status of the *metoikoi*[13] in the Classical world. They were prohibited from marrying a citizen (*epigamia*) under penalty to both sides; they were prohibited from owning land, and even from allowing their cattle to graze on public land; they were also barred from holding public office, or from giving public speeches and taking part in various contests. They had to pay a special tax and to serve in the army as hoplites, but were barred from serving in the cavalry, which often participated in important civil events such as festivals and processions, as well as in athletic games.[14]

Similarly, in the Roman world resident aliens were prohibited from marrying Roman citizens until the time of Augustus (*conubium*), from holding public office, and from serving as *sacerdotes* or in the Senate. They were judged according to the Law of Nations (*ius gentium*), which pertained to both citizens and non-citizens and was regarded as the *ius naturale*, and from the end of the third century BCE resident aliens had their own praetor (*praetor peregrinus*).[15] However, the *Constitutio Antoniana*, published by Caracalla in 211 CE, accorded citizenship to all inhabitants of the empire, thus abolishing any differences and restrictions that had existed previously.

It must be noted that while in general there were various regulations and restrictions on individual aliens in the ancient Near East, groups of the same ethnic and cultural background, or engaged in the same occupation, might be awarded a different status, or at least special rights. The Old Assyrian trading colonies in Anatolia were granted extra-territorial status.[16] In the Graeco-Roman and Hellenistic worlds there were cases where groups of resident aliens, especially those involved in international commerce, were allowed to have their own courts and to solve legal issues according to their own law and customs, under the jurisdiction of foreign magistrates.[17]

In addition, as noted above, surrender agreements in the ancient world often included a clause allowing the conquered to live according to their ancestral customs (*kata patrious nomous*), continuing their lives to a great extent as before, under the hegemony of the new ruler.[18]

THE STATUS OF MINORITIES IN THE BYZANTINE AND SASANIAN EMPIRES

Especially relevant to the issue under discussion here is the status of minority groups under Roman–Byzantine and Sasanian rule.

Jews in Byzantine Society

The most ancient and distinctive minority group living under Roman–Byzantine rule, and one about which we are comparatively well informed, is the Jewish community.

The principle of a community's right to live according to its ancestral customs stood at the basis of the autonomous rule of Jewish communities in the Hellenistic world.[19] The authority of ancient custom in Roman tradition (the *mos maiorum*, *ex consuetudine*, *vetus mos et consuetudo*)[20] was, in its turn, the principle that guided the Roman empire in regard to the Jewish communities when it continued to preserve the rights that were given to them initially in 63 BCE following the conquest of Syria and Palestine by the Romans.

On the basis of this, Jewish communities under Roman rule were given wide-ranging autonomy. This included judicial autonomy headed by a Patriarch; the right to collect taxes; the right to excommunicate members of the community; the exemption from duties entailing the profanation of the Sabbath and holidays; the special privilege of circumcising their children (an act that was generally prohibited throughout the empire, as it was considered mutilation); and more.[21] In fact, this autonomous status at times conferred upon the Jews privileges and exemptions in preference over other citizens of the empire.[22]

Byzantine law, representing the Christian Roman empire, added a new dimension. Although Judaism remained what Tertullian called a *religio licita*,[23] new laws were gradually added, aimed at restricting the Jewish community's autonomy and rights, and segregating them from Christian society. Thus, in a growing number of issues, Jews, as well as Samaritans, pagans, and so-called 'heretics', were discriminated against by law, due to their religious identity:

1. Marriages between Christians and Jews were completely pro-hibited.[24] This clearly originated on religious grounds, and was based on canonical prohibitions.[25] Thus, while the ancient prohibition of intermarriage between citizens and aliens[26] was no doubt already much eroded (as by that time, needless to mention, all the inhabitants of the provinces were citizens of the empire), its place was now taken by the prohibition on interreligious marriages.[27]

2. A law passed in 415 prohibited the building of new synagogues, and ordered the destruction of abandoned ones, thus preventing the expansion of the Jewish presence.[28] Existing synagogues were to remain in their present state.[29] It was permitted, however, to make repairs to prevent 'immediate ruin'.[30]

3. Ownership by Jews of Christian, non-Jewish slaves, and slaves who had converted to Christianity was prohibited, and their manumission was ordered under penalty.[31]

4. In 415 the authority of the Jewish Patriarch was restricted: he was prohibited from serving as judge in legal cases between Jews and Christians, and allowed to sit only in civil cases.[32]

5. A total ban was issued on conversion to Judaism, under heavy penalties.[33] Furthermore, Jews were warned against attempting to dissuade their co-religionists from converting to Christianity.[34]

6. Jews were banned from holding public office, and even from the law profession, although it seems that these prohibitions were not efficiently enforced.[35]

7. Non-Christians were prohibited from giving testimony against Christians unless asked to do so by the state.[36]

8. Jews could not disinherit their children if they converted to Christianity.[37] Christian relatives were in fact to be given prece-dence over non-Christians.[38]

9. Jews were warned against contempt of Christianity and its cult.[39]

It could thus be said that in certain areas Jews, Samaritans, and other non-Christians were treated as second-class citizens, and their status was similar in several aspects to that previously accorded to resident aliens (e.g. prohibition of mixed marriages, restrictions regarding the ownership of property, the holding of public offices and functions, and the ownership of slaves). Nevertheless, the Christian emperors still had a clear obligation to protect the Jewish community, and the Jewish community had the right to live according to its ancient laws and

customs. Until 425 the community had its own Patriarch, who carried the dignified title 'Illustris' and was protected by law from insults and threats.[40] There is no direct evidence that the Byzantine authorities had any part in the annulment of this office. After the cessation of the Patriarchate, Jewish institutions continued to function as before.[41] Jews and Jewish synagogues, which were under growing threat, were protected by law from any harm or damage.[42] Jews were not to be forced to attend court on the Sabbath, due to *vetus mos* and *consuetudo*.[43] The conversion of Jews to Christianity, which was generally encouraged, was prohibited if prompted by debts or other penalties decided by the Jewish courts.[44] There was a prohibition on outsiders fixing the prices of Jewish merchandise.[45]

Was this protection a consequence of the fact that Jews were still citizens of the empire, or that their inferior status, similar to that of resident aliens, now enjoined their protection by the authorities?[46] It may have been a bit of both. The law regarding the protection of synagogues from vandalism expressly notes that 'no one shall be destroyed for being a Jew' and that 'even if someone is entangled in his crimes, the vigour of the courts and the protection of public law (*vigor iurisque publici tutela*) appear to have been instituted in our midst for that very reason, that no one shall have the power to permit himself to take vengeance'.[47]

Clearly, under Byzantine rule being part of the Jewish community had turned from an advantage to a disadvantage, its members having become second-class citizens. Nevertheless, it can be surmised from the laws themselves that Jews still held public office and served as lawyers as late as Justinian's days, and probably later, and thus maintained, at least partially, their former social status.[48]

Non-Zoroastrians in Sasanian Society

Like Byzantine society, Sasanian Persia was an empire with a declared official religion. Society was divided into Zoroastrians and non-Zoroastrians. Additionally, the ideal society is presented in Sasanian literature, and in later sources preserving material from the Sasanian period, as a rigid class-based society. Adapting an ancient Avestan concept, these sources depict a society whose citizens belonged to four different classes: (a) the priests; (b) the warriors; (c) the scribes; and (d) the peasants, artisans, and tradesmen. Class membership was inherited.[49] As in the Near Eastern societies of ancient times, non-citizens – resident

aliens, temporary visitors, people who were banished from the community, illegitimate children, and slaves – were devoid of any civic rights. [50]

What was the status of non-Zoroastrians under Sasanian rule? We are not as well informed about it, since, unlike the Romans, the Sasanians apparently did not compile legal codes; or if they did, they have not survived. [51]

There is, however, one Sasanian law-book, *The Book of a Thousand Judgments*, which provides us with some information. According to this book, a Zoroastrian who had left his religion was cast out from his family and his community, and lost all his family and community privileges. In spite of the prominence of the state religion in the Sasanian empire, he did not, however, lose his basic rights: he was still a member of the civic community, [52] and contractual obligations as well as personal property remained valid after his conversion. [53] In addition, a non-Zoroastrian was not allowed to own a Zoroastrian slave, and a non-Zoroastrian slave who converted to Zoroastrianism had to be manumitted, as did a slave who converted to Christianity in the Byzantine empire. [54] However, according to Sasanian law the slave had to compensate his master for the economic loss involved. [55] If a Zoroastrian was sold into slavery to a non-Zoroastrian, the transaction was considered a theft, they were both branded, and the buyer was not reimbursed. [56]

Unlike the law in Byzantium, Zoroastrian law permitted marriage to a non-Zoroastrian, but the children were not considered part of the family lineage and therefore were not regarded as heirs of their father. They were also exempted on this account from the family's commitments and debts. The same applied to a child who had converted from Zoroastrianism to another religion.

As far as can be determined, apart from the issues of marriage and slave ownership, there does not seem to have been a consistent policy regarding the non-Zoroastrian communities living under Sasanian rule. Both Jews and Christians seem to have had their ups and downs, depending on the specific policy and outlook of the current king. Jews and Christians were persecuted in different periods; [57] especially famous were the persecutions of Yazdgird II (r. 438–57), who persecuted both Christians and Jews, forbidding the Jews from observing the Sabbath. [58] Although Khusro Anūshīrwān was more tolerant, he imposed a special tax on Christians and Jews. [59]

On the other hand, Shāpūr III, Bahrām IV, and above all Yazdgird I (r. 399–421) adopted a favourable policy towards the non-Zoroastrians,

mostly on political grounds.[60] Yazdgird, who had signed a treaty with the Byzantine emperor, Theodosius I, allowed the rebuilding of the destroyed churches, freed Christian prisoners, and actually validated the decisions of the church council that convened in Ctesiphon in 410. The bishops were convened at the Royal Port and were promised freedom of cult, the right to build churches, and secured the authority of the Catholicos over the community.[61] Similar commitments were made in an appendix to the Byzantine–Persian treaty of 561, cited by Menander Protector, regarding the rights of the Nestorian Christians living under Persian rule.[62]

Inconsistency was such that at other times non-Zoroastrians could be part of the upper strata, and could be accorded special honours. Thus, Yazdgird I married Shoshinduxt, the daughter of the Jewish Exilarch (*resh galutha*), and one of the Exilarchs received from one of the kings a *kamar*, a belt, as a sign of high distinction, usually indicating a vassal–lord relationship.[63]

Both Jews and Christians served as scribes and officials in the Sasanian government. There were Christians who served in the upper echelons of the Sasanian army, bearing titles such as *aspār* and *marzbān*. These were actually members of the local nobility who had become Christian. This posed a big problem to the Sasanian rulers, who tried to convince them to revert to Zoroastrianism time and again. The problem was especially acute regarding Armenia, where significant parts of the population had become Christian.[64]

In general, there do not seem to have been many rules on religious identity. As stated by Widengren, 'the position of the religious minorities is impossible to understand if we do not take into account the fact that there existed no articulated legal principle regulating their position except the religious law', which would have led to the execution of all non-Zoroastrians.[65]

In sum, in the Byzantine empire a series of laws restricting the non-Christians developed following the Christianization of the empire. These laws multiplied and changed with the proliferation of Christianity throughout the empire and the consolidation of its position as the exclusive religion of the empire. Nevertheless, the laws mentioned regulated specific issues and were interspersed among other laws. At no stage was there a separate comprehensive document including a set of regulations pertaining specifically to non-Christians. This is even truer in the case of the Sasanians, where laws pertaining to non-Zoroastrians were few, while Sasanian policy towards them was volatile, and shifted often between tolerance and intolerance.

MUSLIM AND PRE-MUSLIM MODES
OF SUBORDINATION COMPARED

Byzantine and Sasanian Precedents to Muslim Law
Regarding Non-Muslims

If we review the status of non-Muslims under Muslim rule, we could point out several significant restrictions that correspond with Byzantine law, and to some extent even with Sasanian law, though the latter differ in some respects. As shall be presently demonstrated, only some of these corresponding restrictions are incorporated in *Shurūṭ ʿUmar*, while others have become part of Muslim law and *sharīʿa*.

A methodological comment is in place here: while the Byzantine laws regarding the Jews go back mostly to Theodosian's Code in the first half of the fifth century, they were later included in Justinian's Code, and appear also in epitomes, collections of Justinian's Novellae, canonical collections, and nomocannons which were compiled throughout the sixth and beginning of the seventh centuries.[66] Moreover, Justinian's Code continued to be in use in the East until the second half of the ninth century, when a new code, the *Basilika*, took its place.[67] The *Basilika*, it must be added, was in its turn based on the *Corpus Iuris Civilis*.[68] As has been demonstrated by Jokisch, Byzantine law was known and employed in the caliphate at the end of the eighth century CE, and thus could well have influenced the process of defining the status of non-Muslims in Muslim society which was taking place at that time.[69]

The following issues in Muslim law of non-Muslims correspond with either or both Byzantine and Zoroastrian law:

1. The general concept that existed in both empires, of dividing citizens according to their religious identity – Christians and non-Christians, or Zoroastrians and non-Zoroastrians – was a basic tenet of Muslim rule. This is at variance with other preceding concepts, where the division was according to tribal bonds or citizen versus resident alien. Furthermore, Byzantine rule distinguished between Jews, on one hand, and pagans and heretics, on the other. Thus pagans were forbidden 'to hold feasts or carry out any cult'. 'Their altars everywhere' were 'to be destroyed', and their temples 'vindicated for public use'.[70] Pagans and heretics were penalized for their beliefs and cult by capital punishment, confiscation of property, and exile.[71] This is totally in concert with the Muslim concept, which differentiates between *ahl al-kitāb* and the

mushrikūn. Just as the Jews were considered adherents of a *religio licita* and allowed to keep their synagogues and their cult, so were the *ahl al-kitāb*. This was true neither for the pagans nor for the *mushrikūn*, who were persecuted until they converted. It thus may be that the special status given to *ahl al-kitāb* in the Muslim caliphate was inspired initially by the prior status of the Jews in the Byzantine empire.

2. As we have seen above, the fate of non-Muslim prayer-houses was the focus of heated discussion throughout the eighth century, and opinions ranged from the obligation to protect all prayer-houses in places conquered through an agreement to the claim that they may – or even should – be destroyed in any place settled by Muslims.[72] This discussion seems in effect to have come to an end[73] with the acceptance of *Shurūṭ ʿUmar*, which stated that 'we shall not build, in our cities or in their neighbourhood, new monasteries, churches, convents, or monk's cells, nor shall we repair, by day or by night, such of them as fall in ruin (*ma khuriba min kanāʾisina*) or are situated in the quarters of the Muslims'. The law regarding the status of synagogues in the *Shurūṭ* is almost identical to the analogous Byzantine law. In both cases, prayer-houses are to be protected. However, new ones are not to be built, and abandoned ones not to be reconstructed.[74] Although not mentioned explicitly in the *Shurūṭ*, the text implies, as does Byzantine law, that repair work was permitted in order to prevent immediate ruin, with the exception of those that were already ruined, and presumably had fallen into disuse.[75] Additionally, some of the versions of the *Shurūṭ* note that Christians were not allowed to congregate in churches that were located in the midst of Muslim quarters ('*wa-la naqṣidu al-ijtimāʿ fīmā kāna minhā fī khiṭaṭ al-muslimīn*'),[76] or to repair those churches that were in Muslim quarters ('*wa-la nujaddid ma khuriba min kanāʾisina wa-la ma kāna minhā fī khiṭaṭ al-muslimīn*').[77] This seems to be an extension of the law preventing the reconstruction of abandoned churches. In fact, the message was that churches located where the population had become mainly Muslim were as good as abandoned.

3. Like Byzantine and Zoroastrian law, Muslim law prohibited non-Muslims from owning Muslim slaves. Thus a Christian was compelled to sell his Muslim slave, or a slave who had converted to Islam, to a Muslim.[78] The *Shurūṭ* states that Christians were not allowed to hold slaves who had been taken by the Muslims

('*lā nattakhidhu min al-raqīq mā jarat ʿalayhi sihām al-muslimīn*').[79] This seems to be again an extension, stating that in fact no prisoner taken by Muslims could be sold to a non-Muslim. As captives were the main source of slaves,[80] this would mean that, at least in theory, it may have been quite difficult for a non-Muslim to purchase a slave.

Nonetheless, the Geniza documents indicate that the Jews were big in the slave trade. Jewish traders purchased their slaves in distant places such as Sudan, Nubia, India, and Europe (Greek speakers as well as 'Franks') and often converted them to Judaism, in spite of the Muslim prohibition on converting anyone to any religion other than Islam.[81]

4. The prohibition on holding public office, which Byzantine law imposed on all non-Christians, was adopted by the Muslim authorities as well.[82] Precisely the same sentiments on the question of unbelievers in public office that are reflected in the Byzantine and Sasanian prohibitions[83] are expressed in Muslim literature through the ages.[84] Interestingly, although the Qurʾān warns repeatedly against the hypocrisy and disloyalty of the unbelievers, and advises against taking them as *awliyāʾ*,[85] and despite the fact that there was general consensus regarding the unacceptability of unbelievers in public office, such a prohibition is not mentioned in the *Shurūṭ*. This may be due to the fact that rather than being part of the *Shurūṭ*, a document to which the non-Muslims commited themselves in order to receive the status of the 'Protected People', here is a law that needed to be put into effect by the rulers, given that employing a non-Muslim was their exclusive privilege.[86] This prohibition was indeed imposed by the caliph al-Mutawakkil (846–61 CE).[87]

5. Both Byzantine and Islamic law punish apostasy with death, and deem the preventing of an unbeliever from joining the true religion to be a cardinal offence.[88]

6. The attitude to intermarriage in Islamic law seems to deviate somewhat from both Byzantine and Zoroastrian law. Byzantine law prohibited such marriages unequivocally, while Zoroastrian law permitted marriage to a non-Zoroastrian woman while denying the children of such offspring the status of heirs. Based on Q 5:5, Islam allows marriage between a Muslim man and a non-Muslim woman from *ahl al-kitāb*, while forbidding marriage between a non-Muslim man and a Muslim woman (Q 2:221). Some jurists explain that the latter would be a form of enslavement of a Muslim

by a non-Muslim, yet it is self-evident that while in the former case the children are raised as Muslims, in the latter they remain *dhimmī*s, a situation which is of course undesirable.[89]

7. The Muslim law regarding inheritance by non-Muslims is similar to Byzantine law in that *dhimmī*s cannot inherit from Muslims, as already noted by Fattal,[90] and to Zoroastrian law in that a non-Muslim woman may not inherit from her husband.[91]

8. Muslim law, like Byzantine law, considers a non-Muslim's testimony inadmissible against Muslims.[92]

9. As Byzantine law (above) prohibits Jews from mocking and insulting Jesus and Christianity,[93] so Muslim law condemns the defamation (*sabb*; *shaṭm*) of Islam and the Prophet.[94] This issue is discussed by Abū ʿUbayd,[95] and is the first issue treated in al-Shāfiʿī's alternative document, which was to be signed with the Christians seeking an *amān*.[96] The *Shurūṭ* seems to relate to this indirectly in several clauses, prohibiting the display of polytheism, the selling of wine, and the rearing of pigs in Muslim neighbourhoods.[97]

Theoretically, it may be assumed of course that some of these similarities between Byzantine law and Muslim law regarding the minorities are sociologically inherent to the situation. However, in two issues the similarity is striking. The first – the division of society into Muslims and non-Muslims, non-Muslims being themselves divided into *mushrikūn* and *ahl al-kitāb* – is completely in concert with the distinction in Byzantine society between Christians and non-Christians; non-Christians themselves divided into Jews, on one hand, and pagans and heretics, on the other. The second is found in the law regarding the prayer-houses, stating in both cases that existing structures might be kept, new ones might not be built, and repair work could be allowed only in those that were still active. If we are to add to these two the accumulation of similarities in the other issues, including the holding of public office, the matter of slaves, and those of inheritance, defamation, and – partially – intermarriage, it seems more than likely that Muslim law regarding non-Muslim communities was influenced by the position of non-Christians in general, and Jews in particular, in the Byzantine empire.

This is well in line with Patricia Crone's view, as expressed in her *Roman, Provincial and Islamic Law*, that the Muslims adopted laws that prevailed in Near Eastern societies, adapting them to their needs; they were not necessarily taken directly from the Byzantine law code, but rather followed the prevailing local or provincial laws and customs,

absorbing elements from Roman, Jewish, Hellenistic, Sasanian law, etc.[98] Moreover, Jokisch's thesis regarding the adoption of the actual Roman law code by the Muslims via its later versions such as the *Digestsumma*[99] towards the end of the eighth century reinforces the view that the Muslims were well acquainted with Byzantine law and did not hesitate to adopt it where they found it adequate for their needs.

At the time of the arrival of the Muslim conquerors, societies of the Byzantine East distinguished clearly between its Christian and non-Christian members, and applied a series of regulations and restrictions that discriminated against non-Christians. The conquerors could well have been made aware of these both via the Latin or Greek versions of the law, as well as through contact with members of the conquered societies.

Rules Regarding Non-Muslims that Cannot Be Traced Back to Byzantine or Zoroastrian Law

We have seen above that there are significant similarities between Byzantine and Muslim law regarding the position of members of other accepted religious communities.[100] In the following section I would like to examine a large number of Muslim rules regarding non-Muslims which have no apparent parallels in Byzantine or Zoroastrian law. As will be seen, these rules appear in various Muslim sources; yet given the prominence of the *Shurūṭ* document in Muslim society, and the special place accorded to these unprecedented clauses in the document itself, I believe it is best to examine this issue on the basis of the *Shurūṭ*.

It should be noted that there is one striking difference between the *Shurūṭ* and pre-Islamic law regarding minorities which needs to be emphasized. This is the fact that the Muslims chose to draw up a special document presenting the regulations and restrictions by which the non-Muslims were bound in return for their *amān*. Documents regarding the status of minorities or subordinate groups are not attested before the coming of Islam. Thus, despite the similarities discussed above, we are seemingly faced with a unique phenomenon.

As noted, *Shurūṭ ʿUmar* contains many clauses regarding the religious minorities whose origins cannot be found in the Byzantine or Zoroastrian laws. We are thus faced with the question of the origin and purpose of these clauses.

The origins of some clauses are more easily explained; thus, clause 2, regarding the right of passage of all Muslims, the duty to supply them

with board and lodging for three days, and the commitment not to give shelter to spies or to conspire against Muslims, is clearly a remnant of the early agreements, as has already been noted by Noth.[101] The authors of the *Shurūṭ*, just like Abū Yūsuf, based the general *ṣulḥ* agreement on the early conquest agreements, extracting from them both the format of a surrender agreement and the clauses that were still suitable for their needs. Other clauses – clause 9, prohibiting the selling of wine or the rearing of pigs in the vicinity of Muslims;[102] clause 3, the prohibition on 'teaching the Qurʾān to our children'; or the clause on displaying crosses; or that concerning polytheism, which does not appear in al-Ṭurṭūshī's version[103] – are likely to be an adoption and extension of the Byzantine prohibitions on contempt of the local religion and cult,[104] although they may well have developed independently, being natural and intuitive measures aimed at protecting the ruling religion and asserting its supremacy.

We are still left with a significant number of clauses which are not accounted for:

1. clause 5: The obligation to show respect to the Muslims and give them priority in seating, and not calling on Muslims in their homes.[105]

2. clause 6: The requirement not to resemble the Muslims in dress, hairstyle, speech, or *kunya*s. Listed specifically here are the *qalansuwa*, the turban (*ʿimāma*), footwear, and the parting of the hair.[106]

3. clause 7: The prohibition on the use of saddles, girding swords or carrying arms.

4. clause 8: The prohibition on possession of seals engraved in Arabic.

5. clause 10: The requirement to 'clip the [hair at the] front of the head' – presumably to cut the hair across the forehead short, i.e. to wear a fringe.

6. clause 11: The requirement 'to dress the same way wherever we may be and to bind the *zunnār* around our waists'.

7. clause 12: The prohibitions on conducting religious processions, especially on Palm Sunday and at Easter (*wa-lā nakhruju bāʿūthan wa-lā shaʿānīn*), on using the clappers loudly, on the raising of voices in church services in the presence of Muslims, or during funerals, or the showing of lights in Muslim roads or markets.

What are the sources and the significance of all these prohibitions and demands imposed by the Muslims on non-Muslims? As noted above,

most of these have easily been explained away as products of the demand for *ghiyār*, or the need for a distinctive appearance, based on the ideal of *lā tashabbahū*,[107] an ideal that sprang up in the nascent Muslim community, which had to differentiate and define itself clearly versus the other long-established religious communities of Jews, Christians, and polytheists. Noth tried to claim, indeed, that all of these demands were a result of this need for differentiation.[108] Yet all researchers have agreed that the document was finally formulated and canonized at a time when the rule of Islam was already well established. If differentiation of the unformed Muslim community was the issue then it would have been much more fitting for such prohibitions and requirements to be applied during the period following the conquest! However, we do not have any evidence that such demands were imposed at the time. Even according to Muslim tradition itself, it is only in the days of ʿUmar b. ʿAbd al-ʿAzīz that demands for distinctive dress began.[109] In addition, the ideal of *lā tashabbahū* actually requires the Muslims – not the non-Muslims – to take action to differentiate themselves. Examples are the requirement that Muslims dress differently, greet each other differently, or refrain from kissing tombs, as Jews and Christians do.[110] Ibn Qayyim al-Jawziyya himself states that until the conquest only believers could be commanded to adopt certain distinctive customs, and that it was only after the conquest that ʿUmar b. al-Khaṭṭāb, to whom the document is attributed, could order *ahl al-kitāb* to distinguish themselves from the Muslims.[111] As already noted, however, this did not in fact happen following the conquest, but, it seems, only almost a century afterwards, as shown above (Chapter 3).

In addition, some of these clauses cannot be defined as an expression of *lā tashabbahū*. Examples are clause 5, the obligation to show respect to Muslims and give them priority in seating, the prohibition on calling on Muslims in their homes; or clause 12, which includes prohibitions on conducting religious processions, on using the clappers loudly, on raising the voice in church services or in the presence of Muslims, on raising the voice in funerals, and on showing lights in Muslim roads or markets.

These clauses, central to the *Shurūṭ*, should probably be seen as the expression of a new perception developed by the Muslims in the course of the eighth century, regarding the place of non-Muslims in Islamicate society. As shall be demonstrated, the roots of this new perception were deeply entrenched in the Iranian social ethos and mores.[112] My claim is that the building-blocks used by the Muslims to create this new social order actually came from the dismantling of the old. That is, the Muslims adopted the Sasanian aristocratic ethos regarding the social structure

and its status symbols, and used them in order to appropriate it, and thereby establish their own supremacy over the non-Muslims.[113] The non-Muslims, or *dhimmī*s, were now treated as the lower class had been in Sasanian society, thus becoming an inferior class of resident aliens in the new social order that was being promoted. This was reflected in the Muslim appropriation of ancient Iranian status symbols, which were thenceforth forbidden to the non-Muslims. The *Shurūṭ* document thus needs to be seen within the comprehensive context of this new Muslim perception of a social order that was being formed, and not just as a set of rules pertaining to the non-Muslims which was invented *ex nihilo* by the Muslim rulers following the conquest.

Before I go on to demonstrate this I should like to make a methodological comment: there is no doubt that the Muslims adopted many notions, concepts, and costumes from both the Byzantine and Sasanian worlds. In the first part of this chapter I referred to regulations and laws that seem to have originated in the Byzantine realm. In the following pages I will be referring mostly to concepts that seem to me to have originated in the Iranian court culture and social mores. Still, it must be taken into account that some of these customs and practices were prevalent in the Byzantine realm as well. This is not surprising, as the Hellenistic kingdoms had been, from the time of Philip of Macedon,[114] and much more so from the reign of Alexander the Great, well aware of the Persian court, and sought in fact to emulate many of its practices. Alexander adopted articles of Persian royal dress – the tiara, the girdle – made use of the golden throne, adopted Persian court ceremony, and even attempted to introduce the *proskynesis* (prostration), an ancient act of homage to the Persian kings, among his Macedonian and Greek subjects,[115] an attempt that aroused much controversy in the Greek world and was vehemently rejected.[116] Although there is disagreement over whether Alexander proclaimed himself Great King (Shahunshah), there is no doubt that he adopted all of these components as part of his kingship of Asia. Kingship, half Greek and half Oriental, dominated the eastern Mediterranean for the three centuries after Alexander.[117] This process was further enhanced later on by the changes in imperial status and the adoption of the Hellenistic royal practices introduced from the end of the third century CE onwards by the emperor Diocletian and the following emperors, when all the remaining external manifestations of the Roman *civitas* ideal had been disposed of.

By the sixth century Byzantine aristocratic court dress, manners, and costume were just as lavish and luxurious as those of the Persian nobility,[118] and ceremony and ritual just as pompous.[119] Elaborate silk

robes and other paraphernalia were adopted in honorific investiture ceremonies such as church accession, ambassadorial exchange, and bureaucracy promotion.[120] Justinian issued an edict according to which no one but the emperor was allowed to decorate his bridles and saddles or his belts with pearls, emeralds, or hyacinths.[121] It is nevertheless clear that the majority of these affectations originated in the Iranian world. In fact, scholars have suggested that Byzantine emperors admired Sasanian pomp and emulated it and that the mosaics of Ravenna were a deliberate attempt to imitate Sasanian imperial iconography.[122]

Nevertheless, it seems to have been the Sasanian aristocratic social ethos that played the main role in the creation of *dhimmī* status. For one thing, the principles of a rigidly structured hierarchical class society, which stand at the basis of *Shurūṭ ʿUmar* (as will presently be shown), are typical of the Sasanian rather than the Byzantine social ethos. Byzantine society was in fact, both in theory and in practice, a much more mobile society, as noted by Haldon, who says that 'Late Roman Society was neither rigidly hierarchical nor inflexible. It was possible to move from relatively humble status to a position of considerable wealth and power, particularly through service in the army or another state service.'[123] In Byzantium the unique appearance and the special appurtenances represented the office, the formal position, or the function, rather than a fixed and inherent social class that one formally belonged to, as was the case in Sasanian society – theoretically, even if not always practically.

This is not to say, of course, that Islamicate society would replicate Sasanian society, nor would it adopt its social ethos in full, yet it did espouse many of its social concepts.[124] Although less hierarchical than Sasanian society, Islamicate society would be made up of two main sectors: that of the ruling Muslims, which would in its turn be divided into *khāṣṣa* (the distinguished people or upper classes), *aʿyān* (the notables), and *ʿāmma* (common people); and that of the non-Muslims, which was socially inferior to the Muslim sector. One should, however, take into account that in both Sasanian and Islamicate society there existed an evident gap and continuous tension between social theory and everyday reality.

In addition, many of the clauses of the *Shurūṭ* to be discussed here are clearly of Sasanian origin, and bear no Byzantine parallel. This goes for both items of apparel and various social mores.

Another claim in support of Iranian rather than Byzantine influence is that while Byzantine presence greatly diminished following the conquest, Sasanian presence did not. Byzantine formal military and civil elements

shrank dramatically in the wake of the Arab conquest. Although certain elements of Byzantine administration and rule continued to be applied throughout the seventh century in the territories that had previously been part of the Byzantine empire, large parts of the upper strata – and certainly the formal administration – left the conquered territories and emigrated to Byzantium.[125] The only remaining representative element of the Byzantine formal hierarchy was the clergy. Thus Byzantine society actually lost the main constituent of its upper classes, including the backbone of its administration. The result was that there probably was not a substantial group of Byzantine bureaucrats, officials, generals, and others present, who could serve as a model. True, the Byzantine system of administration was retained to a large extent throughout the first century after the conquest, but its bureaucrats were no doubt low-grade local administrators rather than those who served in the upper echelons of the Byzantine administration. Sasanian society, on the other hand, apart from the highest echelon of its nobility, retained most of its social components, including its administrators and scribes; these went on to serve as the transmitters of the social values and concepts of Sasanian society.[126] Significant parts of the Sasanian elites thus continued to display all the symbols and appurtenances of the social status into which they were born.

THE SASANIAN ORIGINS OF THE SOCIAL POSITION OF NON-MUSLIMS IN ISLAMICATE SOCIETY

The Rejection and Adoption of Royal Sasanian Manners and Status Symbols

A brief review of the process of adoption of the Sasanian social ethos and symbols of authority is in order here, as this serves as the key to unravelling the meaning and significance of the central part of the *Shurūṭ*.

The conquest of the East by the Muslims was followed by a process of slow and gradual transformation of Muslim society, from an Arab tribal society to a highly urbanized and cultivated civilization which adopted many elements characteristic of the local cultures. This is documented in traditions that both mirror this process and question or reject the values that stand at its basis.

One of the first and most prominent elements was the adoption of new items of apparel which designated the status of their wearers. Muslim literature is replete with traditions regarding the prohibition on wearing

silk[127] and luxurious garments. Many of these traditions are attributed to ʿUmar b. al-Khaṭṭāb. Although it is highly doubtful that the following incidents took place as described, they nevertheless demonstrate that the conquest had brought about a significant change in the dress and apparel of the Arabs, a change that aroused great controversy among them.

ʿUmar b. al-Khaṭṭāb is presented in both Muslim and non-Muslim historiography in the guise of a Bedouin, dressed in shabby clothes, riding on a camel, carrying with him only his most essential needs. Upon his arrival in Jerusalem, he refused offers from Muslims and Christians to improve his apparel or to exchange his camel for a valuable horse.[128] According to the Christian sources he finally agreed to accept the clothes offered him by Sophronius only temporarily, until his own shabby garments were washed. He is described in one of the sources as weaving baskets and mats out of palm leaves for his living![129]

According to these traditions ʿUmar vehemently rejected anything to do with the luxury, finesse, and other elements of comfort and extravagance that abounded around him in the territories that were being conquered, thus unmistakably representing the Bedouin ideal. This is well exemplified in a famous story, also told in several versions, the earliest of which appears in al-Balādhurī:[130] When ʿUmar went to Syria he saw Muʿāwiya accompanied by a retinue, such as was typical of Sasanian royalty. ʿUmar disapproved of this, reprimanded him, and said: 'This is the Khusro of the Arabs!' (*la-hadha kisrā al-ʿarab*). Muʿāwiya's response to this was 'Since we are in the land of our enemy, and are being watched by many of the enemies' spies, we need to exhibit our strength.' ʿUmar replied that he did not know whether this answer was a sound strategy or a clever deceit. Thus, although according to this tradition ʿUmar disapproved of it, he could understand the logic of adopting the ways of the *akāsira* (Sasanian royal manners). A similar incident is adduced by al-Ṭabarī in which ʿUmar met Yazīd b. Abī Sufyān, Abū ʿUbayda and Khālid b. al-Jābiya. They appeared riding on horses and clad in brocade and silk. ʿUmar pelted them with stones, saying: 'How quickly were you turned away from your senses! Is it me that you are coming to meet in this attire? … If you did this at the head of two hundred men, I would have replaced you with others.' Their reply was: 'O Commander of the Faithful, these are coats (*yalāmiq*) and we have our weapons with us.'[131]

This story is repeated in a more elaborate manner by al-Qalqashandī and by Ibn Khaldūn. Al-Qalqashandī adds that when Muʿāwiya became caliph he constantly displayed his sovereignty. The caliphs that followed him went even further, till the caliphate became like a kingdom surpassing

those of the Khusros and the Caesars.[132] In his chapter 'The characteristic emblems of royal and government authority' Ibn Khaldūn says:

> At the beginning of Islam, the Muslims wanted to avoid the coarseness of royal authority and do without royal customs. They also despised pomp, which has nothing whatever to do with the truth. *The caliphate then came to be royal authority, and the Muslims learned to esteem the splendor and luxury of this world. Persian and Byzantine clients, subjects of the preceding (pre-Islamic) dynasties, mixed with them and showed them their ways of ostentation and luxury.*[133]

Although these traditions evidently should not be taken at face value, they clearly reflect awareness of the fact that Muslim rulers abandoned Arabian tribal customs and values in favour of those of the Sasanians and the Byzantines, and it is clear that this transformation was controversial. The adoption of the manners of the *akāsira* by Arab caliphs and commanders is conceived as a negative process that would culminate in the Arabs losing their own cultural and political tradition. The terms used most often to describe this process – *akāsira*, *kisrawiya*, *kisrā al-ʿarab*, and *kisrawī al-fiʿl* – indicate that the Muslims themselves perceived this process as the adoption of aristocratic Sasanian manners.

The tension around the 'adoption of royal manners', i.e. imitating the ostentatious and lavish dress, paraphernalia, and manners of the Sasanian nobility, may also be found in traditions expressing controversy regarding the appearance of the Prophet. Thus, there are conflicting traditions regarding the Prophet's attitude towards such issues as the use of prestigious textiles such as silk, satin, and brocade clothes, silver vessels, gold seal rings, and hairstyles.[134]

In later times, however, the term seems to have lost its negative connotation. Thus, the term *kisrawī al-fiʿl* can denote a 'true royal style of life'. Abū Dulaf al-ʿIjlī (d. 840), a prominent figure in the court of al-Maʾmūn and al-Muʿtaṣim, described himself thus.[135]

It is quite evident that these early stories of the rejection of Sasanian royal manners or status symbols from the beginning of the Umayyad period in fact point to their early adoption. This espousal encompassed many areas.[136] First and foremost was the adoption of the local vestimentary system by the ruling classes among the Muslims, as is clearly shown in Yedida Kalfon-Stillman's book *Arab Dress*.[137] Thus, while according to the Qurʾān the Prophet had rejected luxury and extravagance (*isrāf*), such as silk clothes (Q 7:26), his followers in the major cities during the Umayyad period were already wearing silk, brocade, satin, etc.

There is plenty of evidence supporting the early infiltration of Persian elements into Muslim dress and art, as well as symbols and attributes, even in areas that had previously been controlled by the Byzantines. In fact, some such elements of Sasanian culture penetrated Byzantium and Arabia even before the conquest.[138] Persian items of apparel were widely used by the Umayyad caliphs, beginning probably from the time of Yazīd I (r. 680–3).[139] The Umayyads adopted typical Persian dress items such as the Persian trousers – the *sirwāl* – and the *qalansuwa*.[140] Sulaymān b. ʿAbd al-Malik (r. 715–17) and his courtiers dressed luxuriously, wearing among other garments a *sirwāl* and a *qalansuwa ṭawīla* made of variegated silk.[141]

The caliphal statue (possibly representing the caliph Hishām, who was known for dressing in a luxurious manner) at Khirbat al-Mafjar (second quarter of the eighth century) is also presented with Persian royal dress and attributes.[142] The figure of the caliph is wearing 'an ankle-length Sasanian-style *qabāʾ* with "pearl border", the coat cinched with an ornamented belt, and *sirwāl* can be seen below the hem of the coat's flared skirt'.[143] This caliphal figure is holding a dagger in the manner of the Sasanian nobles. A stone *qalansuwa ṭawīla*, a Sasanian royal attribute, hung in the audience hall of Khirbat al-Mafjar, most probably over the throne.[144] The art and architecture of these desert retreats – Khirbat al-Mafjar, Qaṣr al-Ḥayr al-Gharbī, and Quṣayr ʿAmra – are full of Sasanian influences, and especially of Sasanian royal symbols such as winged horses, and the *simurgh* as well as various artistic elements.[145] In addition, the winged crown found on Umayyad coins pre-dating ʿAbd al-Malik as well as in the Dome of the Rock is modelled after the shah's crown.[146] There is no doubt, therefore, that there was extensive adoption of Sasanian status symbols, including items of apparel and other attributes, among the Muslim elite as early as the end of the seventh century and the first half of the eighth. Kalfon-Stillman believes, however, that the Umayyads used these only in private, while formally the appearance of the *sayyid* was still preserved.[147] She notes that 'Persian cultural influences became more pronounced under the Abbāsids … [at that time] Persian garments such as *sirwāl*, *jawrab*, and the *qalansuwa ṭawīla* became widely popular.'[148]

It should be noted that some prestigious articles of clothing adopted by the Arabs, such as the *khilʿa*, or robe of honour, and the *ṭirāz*, embroidered margins or embroidered robes, as well as the *minṭaqa*, the special bejewelled sword belt worn by officials (see below), were worn by both Byzantine and Persian aristocracy. However, the custom of bestowing a robe of honour was a very old and significant Iranic tradition, as were the

ILLUSTRATION 2. The figure of the caliph holding a dagger and wearing a Sasanian-style *qabāʾ*, an ornamented belt, and *sirwāl*; from the bath at Khirbat al-Mafjar, second quarter of the eighth century (photograph by Clara Amit, courtesy of Israel Antiquities Authority).

special belts. Taking into account the multitude of Iranian items of dress, it is thus very likely that these two were also most probably passed on through Sasanian rather than Byzantine cultural mediation.

The appropriation of Persian status symbols, however, went much further than just the adoption of prestigious items of apparel. In fact, with the rise of the ʿAbbāsids, the caliphs seem to have reconstructed, to a great extent, the Persian court, its ceremonies, and its manners.[149] This is expressly noted in *adab* literature.[150] They adopted the insignia of sovereignty such as the throne (*kursī*, *sarīr*), the curtain (*sitr*), the royal seal (*khatam*), the banners (*alwiya*), robes of honour (*khilaʿ*).[151] Other paraphernalia such as turbans, boots, belts and swords (which will be referred to later on) were an important part of this. Colours were also a very important element. The caliph wore a black turban and a black official robe, and red boots – the latter being a symbol of royalty during the Sasanian period.[152] In addition, black, the dynastic colour of the ʿAbbāsids, was limited only to the caliphal family and the various court officials.

Like the Persian court, the ʿAbbāsid court was extremely formal and hierarchic, and the position of each member in the audience hall, his dress, and the way he was addressed, were set according to his rank and dignity. There was a distinct difference between ceremonial dress and ordinary dress.[153] The titles, ceremonies, and protocols of this court are minutely described in *adab* literature such as that of Pseudo-al-Jāḥiẓ (776–869),[154] Ibn ʿAbd Rabbih (860–940) in *al-ʿIqd al-farīd*,[155] and Hilāl al-Ṣābīʾ (969–1056), in his *Rusūm dār al-khilāfa*.[156] The centrality of these issues in Muslim society led in fact to an abundance of compositions related to *adab* and *zarf*.

It may therefore be concluded that the Muslim elites and caliphs had by the end of the seventh century started to adopt many items of apparel and paraphernalia used previously by the Sasanian elites in order to exhibit their prestigious social status.

This process gained speed and importance with the rise of the ʿAbbāsids, when the adoption of royal Persian dress and manners moved from the private to the public sphere and was encorporated into official ceremonial events of the caliphal court. As noted by Rose, 'Sasanian royal iconography continued for many decades after the end of the dynasty, influencing courtly fashion in Islamic Iran as well as in Byzantium and central Asia.'[157] As we shall see, this process was directly connected to the central place that the element of *ghiyār* acquired in the *Shurūṭ*.

The *Dibīr*s and the *Dihqān*s as Transmitters
of Cultural and Social Concepts

The adoption of this formal hierarchical system and the accompanying status symbols came about first and foremost through the influence of two groups within the Sasanian society: the scribes (Persian *dabīr*s; Pahlavi *dibīr*s; Arabic *kuttāb*); and the lesser nobility (*dihqān*s).[158]

According to the formal division of Sasanian society into four estates, which was promoted during Khusro Anūshīrwān's reign,[159] the *dibīr*s (scribes and secretaries) belonged to the third estate of Sasanian society, which comprised physicians, scribes, and astrologers, and came after that of the priests and the warriors, and before the fourth and last estate, the peasants.[160] The *dibīr*s were not only the official correspondents, accountants, and judicial secretaries of the king, but also important political figures: they held posts such as secretary of the army (*kātib al-jund*), and secretary of finance (*kātib al-kharāj*), served at times as ministers of defence, and were put in charge of land reforms and special investigations.[161]

The *dihqān*s also belonged to the third estate, which most probably emerged as a social class following the land reforms of Khusro Anūshīrwān (r. 531–79).[162] They represented the lower echelons of the nobility, and were smaller land owners than the great nobles; they were responsible for the management of local affairs, and their main duty was to collect taxes for the government.

Both the *dibīr*s and the *dihqān*s played important roles in the nascent Islamic state. While large parts of the upper strata of Sasanian nobility lost their status and privileges, the lower nobility, including the *dibīr*s and the *dihqān*s, adapted and, to a large extent, kept its former status. The *dibīr*s and the *dihqān*s managed to secure recognition of their privileges and positions, and in some cases converted and gradually made their way into the upper strata of Muslim society.[163] After the conquest, the Muslims relied on the *dibīr*s in the former Sasanian empire, as well as on the local administrators in the conquered Byzantine territories, to maintain the administration in its different forms in the conquered areas. Their dependence on these administrative classes is well attested in the sources.[164] The *dihqān*s too fulfilled an important role in the comparatively undisrupted management of their districts, cities, and villages. The fact that this process was also taking place in Iraq, where there was a multitude of Christians and Christian centres, makes it doubly important when it comes to the issues we are about to expound on. These

groups thus served as the backbone of the Islamic administrative system; through it they introduced the Muslim conquerors to various aspects of their culture and society, and influenced them immensely during the formative period of Islamic society.[165] It is first and foremost via these two groups that the developing Muslim society adopted many of the concepts regarding social order and status that stemmed from Sasanian society.

THE IDEOLOGY OF THE IRANIAN CLASS SYSTEM

According to the prevailing theory, ancient Iranian society was divided according to the Avestan concept into three classes or estates:[166] the 'priests'; the 'warriors', or 'charioteers'; and the 'farmers'.[167] Later, these estates underwent some changes both in structure and terminology. Thus, the 'priests' became 'magians' (*magu-*); the 'warriors' were replaced by the new noble estate *āzātān*, which also included the cavalry; and the last estate, more variegated, was now called *ram* ('flock'). The Sasanian reform, made not later than the beginning of the fifth century, included four estates, and reverted to the Avestan terminology of priests and judges, warriors, and farmers. Following the warriors in the hierarchy, a new estate: the scribes (*dipirān*), was added.[168]

Although it is unclear how strictly this ideal was upheld in practice, this estate membership was seen as inherited from one generation to the next, and theoretically there was to be no mobility from one class to another.[169] This is well exemplified by Firdausī's famous story about a shoemaker who was willing to lend the king a large sum so that his son could become a scribe (*dibīr*), but was rejected.[170] The refusal was due to the belief, voiced also by al-Thaʿālibī, that this might lead to a situation where someone of inferior origin might humiliate the nobles.[171] This is in fact exactly the same reasoning as would be found in Muslim sources regarding the prohibition on employing non-Muslims in official governmental positions.[172]

The establishment of these classes was attributed to mythological founders such as Zoroaster (thus the Avesta and the *Bundahishn*) and Jamsheed (thus Firdausī and al-Thaʿālibī). Émile Benveniste demonstrates that in fact these two traditions are based on one ancient tradition which recounts that Jamsheed (Yama) founded the three classes, and these were later given other names by Zoroaster. According to Benveniste, the Avesta is here reflecting an ancient Mazdean pre-Zoroastrian tradition.[173] The Sasanian social reform which took place around 500 CE actually

adopted this tradition in its ancient form, reverting once again to the Avestan nomenclature, while adding the new class of the scribes (*dipirān*).

Another class that seems to have been added to this scheme only in the Sasanian reform was that of the *dihqān*s, which, as noted above, represented the lower nobility. It should be noted that although *dihqān*s are attested only in the late Sasanian period and most probably emerged as a social class as a result of Khusro Anūshīrwān's land reforms, there was nevertheless a strong tradition attributing the creation of the *dihqān* class to Wēkart or Waygird, brother of Hūshang, the legendary Iranian king, and also one attributing it to Manūshihr, the mythical ancestor of the Iranians.[174] These myths attest to the fact that once the social status of the *dihqān*s was established, it came to be conceived as a primeval status in an established hierarchy, which could not be altered or penetrated.

The ideal of the Iranian estates is clearly conveyed in several documents originating in the Sasanian period. The first is ʿ*Ahd Ardashīr b. Bābak*, a document originating in the late Sasanian period, which was found along with three other documents of Sasanian origin, in MS Köprülü 1608.[175] The document describes the division of society into four classes: (a) the warriors; (b) the priests, ascetics, and guardians of the fire-temples; (c) the scribes, astrologers, and physicians; and (d) the servants, tradesmen, and peasants. It emphasizes the importance of this division, comparing its preservation to the care of the body itself. 'Nothing can afflict the position of sovereignty more than the transfer of one of these classes to the rank of another because the transfer of people from their rank will soon bring about the removal of the king from his throne either by his removal from power or even by his being killed.'[176] It goes on to explain that any change in the social order would only bring about envy and anger and wreak social and political havoc.[177]

The same idea is expounded in another document found in Köprülü 1608, identified by Grignaschi as the *Kitāb al-tāj fī sīrat Anūshīrwān* cited by Ibn al-Nadīm,[178] which was written originally in Pahlavi in the late Sasanian period and translated into Arabic, according to tradition, by Ibn al-Muqaffaʿ. This treatise describes the manner in which Khusro Anūshīrwān organized the ceremony of the address from the throne during the feast of Naurōz.[179] It begins by saying that 'on the day of Naurōz, the king of the Persian kings would hold a public audience, distribute gifts and robes, and set up tables. The people would sit according to their rank, differentiated by the clothes worn for that day, and be silent.'[180]

Another document, central for our understanding of the *Shurūṭ*, is the Letter of Tansar to the king of Ṭabaristān, familiar in its Persian

translation from the early thirteenth century; this version was based on Ibn al-Muqaffaʿs Arabic translation (eighth century) of the Pahlavi text.[181] The letter, which was allegedly written in the time of the first king of the Sasanian dynasty, Ardashīr I, but which according to some scholars may have been written or edited towards the end of Sasanian rule,[182] says:

> He [i.e. the king] has established a visible and general distinction (*tamyīzī ṭāhir wa-ʿāmm*) between men of noble birth and common people (*ahl-i darajāt wa-ʿāmma*) with regard to horses and clothes, houses and gardens, women and servants. Furthermore, he has set differen*c*es (*tafāwut*) among the nobles themselves with regard to entrance and drinking-places, sitting and standing places, clothes, ornaments and houses, according to the dignity of each man's rank. That they may look after their own households and know the privileges and places appropriate to themselves. So no commoner may share sources of enjoyment of life with the nobles, and alliance and marriage between the two groups is forbidden.[183]

Several pages later the question of class divisions and distinctions, especially in dress and appurtenances, is underscored again, even more emphatically:

> This he has made a binding law, his purpose being to make clear the divisions and distinctions among the people (*waḍʿ kard wa qaṣd-i awṣāṭ-i taqdīr dar miyān-i khalāʾ iq bādīd āward*), that the appurtenances proper to each class may be plainly seen. The nobles are distinguished from the artisans and tradespeople by their dress and horses and trappings of pomp, and their women likewise by silken garments; also by their lofty dwellings, their trousers, headgear, hunting and whatever else is customary for the noble. As for the soldiers, or fighting men, he has often conferred positions of honour and favours of all kinds upon that group, because they are forever sacrificing their own lives and possessions and followers for the welfare of those who labour … It is fitting that the working people should salute them and bow before them and that the fighting men in turn should show reverence to the nobles, and that they should have regard one for another according to the loftiness of their rank, and that they should maintain their dignity.[184]

If there is still doubt that there was an element of subjugation involved in these external differences, a proverb cited later on in the letter dissolves this:

> If you are one of the rulers of men, rule the noble with kindness and generosity, but rule the base with contumely (*dhull*), for on contumely they will reform. The base (*liʾām*) are to be subdued.[185]

An *āyīn* attributed to Ardashīr, providing the code of behavior for the nobility,[186] emphasizes once again the importance of the class division, and especially the dress code that differentiates between these different classes:[187]

> We have decided that there will be a special attire for the audience of the kings that will not be departed from; and a special attire for feast days which will not be departed from; and a special attire for the meeting of young men and men which will not be departed from; and for the reception of [people asking] favours an attire that will not be departed from. We have imposed this on the noble because of his richness and honour, and on the humble because of his poverty and baseness. As for the domestic servant and the slaves – we have imposed upon them the dress that may be tucked-up during times of rest and travel. Finally, regarding the peasants and cultivators – we have imposed upon them the dress of baseness (*libās al-madhalla*).

It is evident from these texts that it is not only that the rich nobles were distinguished naturally by their extravagant and luxuriant clothes, but that these clothes were actually imposed upon them, and were suited to the function they were attending. As for the servants and the farmers, not only could they not afford the rich, luxurious clothes of the nobles, they were actually prohibited, according to this aristocratic ethos, from wearing them and must be dressed in the garb that was imposed on them, a garb that indicated their low and base station in society. Thus, according to this ethos, social status should be permanent and could not be changed, and must be exhibited clearly and distinctly through one's attire and paraphernalia.

The Iranian Class System: Between Ethos and Reality

It is now accepted that Arthur Christensen's view, which accepted this aristocratic ethos as a reflection of Sasanian society, needs to be revised.[188] Rather, it appears that this conception was promoted by the Sasanians in order to serve their own interests against certain elements in society that rejected this ethos and the social order it represented. This may be observed in the Letter of Tansar itself, which implies that the correct social order had deteriorated and that the nobles in particular had been negligent in guarding their honour and the splendor of their position.[189] At a time when their rule was threatened on one hand by the Parthian noble families who had rebelled several times against the king, and even managed to depose him at times, and on the other by the

Mazdakite movement, which caused an upheaval among the lower strata of society,[190] the ideal of a closely structured social hierarchy characterized by immobility served as an important means of stabilizing the different social groups and restraining their ambitions.

Nevertheless, this ideal cannot be conceived just as empty Sasanian propaganda. There is no doubt that Sasanian society was based on a strong concept of hereditary social hierarchy. This is evident, as Rubin emphasizes, in Shāpūr's inscriptions in Ḥajjiābād and the Kaʿba-yi-Zardusht, which 'reveal a clear concept of a social hierarchy with rising ranks of dignity according to the closeness to the king, already under the early Sasanian kings'.[191] The connection between social status and agnatic origin is also attested in the sigillographic evidence; thus the *kolāh*s, or special hats worn by the high functionaries, carry, in most cases, the emblems of the great Parthian noble families, indicating that such functionaries usually originated in these families.[192] Pourshariati also notes, in connection with the effects of the Mazdakite movement, that 'the economic, politico-religious, and finally territorial dimensions of the agnatic structure of Iranian society, and the strong cohesive bonds that these established, rendered the fabric of Iranian society far too interconnected for it to be overhauled easily. The agnatic structure especially applied to the Parthian dynastic families.'[193] Thus, in spite of the fact that the great dynastic families challenged the king's authority and power at times, they themselves were avid adherents of the hierarchical hereditary social system which awarded special privileges to the upper classes, while the lower classes could never gain enough power to overhaul this ancient system. There must of course have been a significant divergence between ideology and reality, but it was nevertheless this hierarchical ideal that stood at the base of the Sasanian social system.

THE ADOPTION OF SASANIAN ARISTOCRATIC ETHOS BY THE MUSLIMS

This hierarchical conception, expressed through a wide array of symbols and codes, did not survive unchanged in its Sasanian form in Islamic times. I will not, however, delve here into the discussion regarding the extent of the influence of the Iranian social system on Muslim society. Especially instructive and convincing for those wishing to examine it in more detail is Marlow's comprehensive analysis, which supports the influence of the Iranian quadripartite social hierarchy on the social ideology of Muslim medieval society.[194] There were arguments for and against

this system among Muslim philosophers and historians, and in practice it was mitigated by the egalitarian and meritocratic streak in Islam.[195] Still, by and large, Muslim society carried with it significant social and cultural baggage from Sasanian society. In fact, according to Dimitri Gutas, the 'Abbāsids actually saw themselves as the inheritors not only of the Sasanians, but also of the ancient cultures of Mesopotamia and Iran.[196] All in all, the Sasanian social conception was to have a meaningful influence on the shaping of the new social order in general, and specifically, as I will try and demonstrate here, on the status of the non-Muslims within it. The essence of it is that *Shurūṭ 'Umar* is in fact a reflection of the Sasanian social conception, which was passed on by Persian informants who were familiar both with the Sasanian aristocratic ethos and with the social reality. As shall presently be argued, in the newly formed Islamicate society the non-Muslims now – at least in theory – took the place of the lowest class in society, who represented 'the base which should be subdued'.

The Status of *Mawālī* in Early Muslim Society

The Arab conquest brought about the complete breakdown of Sasanian society. Yet, following the conquest and during the Umayyad period there were, in spite of the basic egalitarian concepts inherent in Islam, four different groups in the society under Muslim rule: the Arab Muslims; the non-Arab Muslims (*mawālī*); the *dhimmī*s; and the slaves. At this point the *mawālī*, despite their conversion to Islam, were socially inferior.[197] They were considered 'vile', while clients of clients were 'the most miserable persons to walk on earth'.[198] Many of the attributes of the position of the *mawālī* in Muslim society actually resemble those that are to be found in the *Shurūṭ* regarding non-Muslims. Thus, *mawālī* were prohibited from marrying Arab women, and the life of a *mawlā* was worth less than that of an Arab. They were also, at least formally, considered unsuitable for holding official positions in the government.[199] In addition, as in the case of the non-Muslims, there were explicit status symbols that differentiated them from the Arab Muslims: they were not to use a *kunya* (surname of relationship), but *ism* (name) only, precisely as is stated in the *Shurūṭ*;[200] they were not to walk alongside Muslims, and in public gatherings they were allotted the last and humblest seats.[201] The same requirements are made in the *Shurūṭ*: 'We shall show respect towards the Muslims, and we shall rise from our seats when they wish to sit' and in al-Shāfi'ī's *Kitāb al-umm*: 'You shall not occupy the middle of the road or the seats in the market, obstructing Muslims.'[202] Many of these manners

of discrimination originated in the Sasanian social conception, as will be presently shown.

Although the differences between the status of Arab and non-Arab Muslims in Muslim society were never completely obliterated, they gradually diminished, the above-mentioned regulations disappeared, and some of the *mawālī* – many of whom were *dibīrs* (*kuttāb*) and *dihqāns* – were awarded central government positions, and became respectable members of Muslim society. It was the non-Muslims, or *dhimmī*s, who were now to fill – theoretically, although not always in practice – the position of the lowest estate in Islamicate society.

The *Dhimmī*s as a Social Stratum within Islamicate Society

While rules of differentiation and discrimination between the social classes may not have been strictly set or followed within Muslim society, they were now rigorously applied, at least in theory, to the non-Muslims within the Islamicate realm. For the first time, the rules of social discrimination that the Sasanian aristocratic ethos had promoted as a means of manifesting hereditary social position were based on religious rather than on agnatic social origin, or even on profession, merit or wealth.

The term used in al-Mutawakkil's famous edict to denote the non-Muslims is *ṭabaqa*[203] – that is, 'stratum' – indicating that the restrictions in his edict applied to a social stratum, based in this case on religious distinction rather than on agnatic origin or social position. The fact that *ahl al-dhimma* were conceived in theory as a social stratum corresponding to one of the Sasanian social strata is evident in al-Ṭabarī's description of the tax system which according to tradition was established by ʿUmar b. al-Khaṭṭāb. When comparing the Sasanian taxation system to the Muslim one, he says that the three upper strata in Sasanian society were exempt from taxation, while the rest, i.e. the fourth stratum, were taxed according to their ability. 'These are', says al-Ṭabarī, 'the taxes which ʿUmar had emulated or adhered to (*iqtadā bi*) when he conquered the land of the Persians, and ordered that they should be collected from Ahl al-Dhimma.'[204] The non-Muslims are clearly compared here to the fourth stratum in Sasanian society.

The Concept of *Ghiyār*

In the light of this, I would like to suggest that the concept of *ghiyār* itself originated in the Iranian world rather than in the ideal of *lā tashabbahū* which, as already mentioned above, is a different concept.[205]

The notion of distinguishing marks was an established principle in Sasanian society. Thus, the Letter of Tansar, cited above, says: 'He [i.e. the king] has established a visible and general distinction (*tamyīzī-ī ṭāhir wa-ʿāmm*) between men of noble birth and common people (*ahl-i darajāt wa-ʿāmma*) with regard to horses and clothes, houses and gardens, women and servants. Furthermore, he has set differences (*tafāwut*) among the nobles themselves … according to the dignity of each man's rank.'[206] Later on he says: 'This he has made a binding law, his purpose being to make clear the means of distinction among the people (*waḍʿ kard wa qaṣd-i awsāṭ-i taqdīr dar miyān-i khalāʾiq bādīd āward*)[207] that the appurtenances proper to each class may be plainly seen.'

To the best of my knowledge, there is no record of early usage of the term *ghiyār* in Arabic, before it was designated to mark the differentiating signs between Muslims and non-Muslims. It may be, therefore, that it is a translation of the Pahlavi term for distinction or differences (possibly *judāgīh*?), lost to us in the process of the translation of the Letter of Tansar to Arabic and then again to Persian.[208]

The 'Unprecedented' Clauses of the *Shurūṭ* as Part of the New Social Ethos

Those clauses of the *Shurūṭ* that could not be accounted for in other ways are easily understood once they are viewed in connection with the Sasanian habit of regulating the clothing of different social strata, including that of the lowest.

In fact, what these clauses forbid to the *dhimmī*s are ancient status symbols of mostly Iranian origin. Some of them are derived from the dress customs of the Iranian nobility, others from the code of behaviour in the presence of the king or other high officials in the royal court or outside it. Some of these customs are very ancient, and are attested in the days of the Achaemenid dynasty – as one would expect, given that both the Parthian and the Sasanian perceptions of royal authority were based on the same Achaemenid prototype.[209] Thus, for example, the terminology used to portray the state hierarchy in the Sasanian rock inscriptions goes back to the time of the Achaemenians,[210] as do the court titles of the Sasanian period.[211] But there are rules, such as those relating to the use of *kunya*s, the clipping of forelocks, or funeral customs, that derive from Arab tribal customs. Anything symbolizing authority, government, or social prestige is denied to the *dhimmī*s. In all cases, the supremacy of the Muslims is exhibited alongside the servility and humility of the *dhimmī*s,

who now formally took the place of the lowest social stratum. This is more than anything else a formal *de iure* declaration of the supremacy of Islam and its believers over the non-Muslims – though *de facto*, of course, this social hierarchy was never that simple, and there where many cases where a rich *dhimmī*, a *dhimmī* doctor, or a *dhimmī* office holder ranked above a Muslim, often much to the discontent of the latter, as is often attested in later Muslim literature.

I shall now review the rules one by one.

Clause 5: The Obligation to Show Respect to Muslims and Give Them Priority in Seating (and on the Road)

The Letter of Tansar brings up the issue of seating arrangements: 'Furthermore, he has set differences among the nobles themselves with regard to entrance and drinking-places, sitting- and standing places.' Seating was indeed a central matter in Iranian society.

In an Armenian book of ranks (*gāhnāmag*) which has survived,[212] it is mentioned that at the Armenian court the nobles and dignitaries sat in the presence of the king according to their rank; the higher the rank, the more cushions on the seat: 'They sat on cushions that were placed progressively higher as they came nearer to the royal cushion.'[213] The *gāhnāmag* mentions the 'fixing of the positions of 400 cushions'.[214] This custom was part of the ceremony of the Arsacid kings of Iran, which was continued by the Sasanians. It goes much further back, however; hierarchic seating order was an ancient custom, as Xenophon (431–355 BCE) reports in his *Cyropaedia* that seating arrangements in the court of Cyrus were ranked according to the esteem of the king, and that those who misbehaved were reassigned to seats at the back.[215] This special seating arrangement in the Iranian court is also recorded by al-Masʿūdī and by Pseudo-al-Jāḥiẓ who noted that under Ardashīr I (r. 226–41 CE) the first class (*ṭabaqa*), made up of the *asāwirā* and the princes sat to the right of the shah, at a distance of about ten cubits (*adhruʿ*); the second class, which included the important *marzubān*s, the tributary kings present at the court, and the *spābadh*s, sat at about ten cubits distance from the first; and the third, which was composed of clowns, men of leisure, and jesters, of respectable origin and status, sat at the bottom of the room.[216]

The hierarchical seating order was closely adopted by the ʿAbbāsids. Thus, al-Ṭabarī reports that in the days of the caliph al-Muʿtaṣim (r. 833–42 CE) the caliphal court was arranged in the following manner: first would be the members of the ʿAbbāsid family; then other respected families (*aṣḥāb al-marātib*); and then other courtiers and dignitaries

(*wa-ghayrihum mi-man lahum martaba*).²¹⁷ The cushions, or seats of honour, continued to be of great significance. Hilāl al-Ṣābiʾ reports that when ʿAḍūd al-Dawla was appointed governor of Iraq he received, among many other things, 'an unstuffed seat of honour embroidered with gold, complete with its leather cushions'. Upon receiving this ʿAḍūd al-Dawla asked that 'the seat of honour be stuffed and carried in the street so that others can see its splendour and the honour which it brings'.²¹⁸

The issue of the seating comes up, in fact, with regard to non-Muslims, in the description of the restrictions imposed on the *dhimmī*s by the caliph al-Mutawakkil in a Samaritan chronicle of that period. The text reads: 'He commanded that every *dhimmī* should wear a distinguishing sign front and back, and that he should not sit in front on a velvet-like cushion (*martabat khaml*).'²¹⁹ The priority granted to the Muslims regarding seating is reiterated by al-Shāfiʿī,²²⁰ who says: 'You shall not occupy the middle of the road or the seats in the market.' Both elements, the sitting position and the cushion, mentioned here, are clearly drawn from the Iranian concept of court hierarchy and class distinctions, which were continued into the Muslim period.²²¹

The requirement 'not to occupy the middle of the road' also appears in al-Mutawakkil's order (*an yashmaʿillū fī al-ṭarīq*)²²² and in Muslim *ḥadīth* literature, stating that 'Jews and Christians encountered on a road should be forced to the narrowest part of the way'.²²³ The idea that the lower classes should clear the road is also attested in the Iranian royal code of behaviour. According to the latter, the road should be cleared on the approach of a king or dignitary. Xenophon recounts that before Cyrus' procession arrived 'rows of soldiers stood on this side of the street and on that, just as even to this day the Persians stand, where the king is to pass; and within these lines no one may enter except those who hold positions of honour (*tetimēmenōn*). And policemen with whips in their hands were stationed there, who struck anyone who tried to crowd in.'²²⁴

Clause 6: The Prohibition on Resembling Muslims

> We shall not seek to resemble the Muslims by imitating any of their garments, the *qalansuwa*, the turban (*ʿimāma*), footwear or the part-ing of the hair. We shall not speak as they do, nor shall we adopt their *kunya*s.²²⁵

Muslim tradition was well aware of the Iranian habit of identify-ing social strata by their special headgear, overgarments, trousers, and footgear, as well as other paraphernalia.²²⁶ Muslim writers report that

Sasanid nobles wore a *qalansuwa*, the nature of which proclaimed their status. Thus, al-Ṭabarī notes that the highest nobility, belonging to the seven noble families, wore a *qalansuwa* embroidered with jewellery worth 100,000 *dirhām*s, while the *marzubān*s wore ones whose value was 50,000 *dirhām*s.[227] *Spābadh*s wore diadems twice as expensive as those of the *marzubān*s. A *marzubān* wore a *qabāʾ*, and a bejewelled belt. Important officials wore belts embroidered with a ewe, which was a symbol of nobility. A *dihqān* had a crown and bracelets.[228] Al-Jahshiyārī (d. 331 H) in *Kitāb al-wuzarāʾ* reports that 'it was the custom of the Persian Emperors that each of the classes (*ṭabaqa*) in their service was to wear an attire which was not to be worn by any other class. When a man appeared before the Emperor, his trade and his class would be known by his attire. All the *kuttāb* in attendance would wear their stipulated attire.'[229] Al-Ṭabarī recounts that 'Manūshihr … was the first who set up *dihqān*s, imposing a *dihqān* over each village, making its inhabitants his chattels and slaves, clothing them in garments of submission (*libās al-madhalla*) and ordering them to obey him [the *dihqān*]'.[230] Muslims were thus acquainted with the Iranian concept that dress codes were not only used to accord privileges to the upper classes and distinguish them from their inferior compatriots, but were actually applied to the lower classes as well. According to this latter statement, the leading principle in the dress code of the lower class was the manifestation of their humility or submission. This is especially significant to the subject under discussion here, since it indicates not only that the concept of the *ghiyār* was Iranian in origin, but that its purpose in this case was to exhibit the low and subjected status of the non-Muslims – the lower class – before the Muslims, who were now regarded as the upper classes of society.

In fact, Muslim tradition recounts that not only was there a different dress code for the different classes, but there were also internal dress codes within the classes. Thus, al-Masʿūdī reports that 'the *dihqān*s branched into five groups according to their rank, and their dress varied according to the might of their rank'.[231]

Like the Iranians, the Muslims reserved certain items of clothing for the upper class. Headgear was considered very significant. Hārūn al-Rashīd was displeased when a certain poet entered his presence wearing a *qalansuwa ṭawīla* and 'soft shoes' (*khuffān dumalikān*).[232] The *qalansuwa ṭawīla* was the heir of the tall rounded hat worn by the Persian dignitaries from the Achaemenid period onwards.[233] It is no wonder, therefore, that the question of headdress is central in the instructions regarding the attire of non-Muslims.

Abū Yūsuf recounts[234] that ʿUmar b. ʿAbd al-ʿAzīz prohibited both the turban and other prestigious dress items for *dhimmī*s, among them the *qabāʾ*, the man's gown – the Persian *kapāh*,[235] silk clothes,[236] the *manāṭiq* (belts, on which more below), and the special hairstyle reaching the shoulders, all of which were status symbols of the privileged upper classes and apparently now worn by the non-Muslims of his day, 'inappropriately' of course.[237]

Another article of clothing that was to be exclusively Muslim was the *ṭirāz*. The Samaritan chronicle, enumerating al-Mutawakkil's restrictions, mentions that 'he ordered that no one should wear *ṭirāz*'[238] i.e. a garment with an embroidered edge. The *ṭirāz* was an unmistakable symbol of royal power alongside the minting of coins and the seal, in both the Byzantine and the Sasanian empires, and was perceived as such among the Muslims too.[239] Ibn Khaldūn, in his chapter 'The characteristic emblems of royal and government authority', devotes a section to *ṭirāz*. He notes that it originated with 'the pre-Islamic non-Arab rulers', and that 'royal garments are embroidered with such a *ṭirāz* in order to increase the prestige of the ruler or the person of lower rank who wears such a garment'. It is thus evident that having absorbed elements of the Iranian social ethos, the Muslims now wanted to reserve all the dress items of the Iranian upper class to themselves, and wished to prevent members of the new lower class, the non-Muslims, from possessing them.

Another matter particularly significant to our discussion here is the existence of a social colour code in Iranian society. According to the Iranian cosmogonic myth as told in the *Bundahishn*, Ohrmazd wore white, the garment of the wise, signifying the estate of the priests; the warriors had a golden dress; while the husbandmen were distinguished by a dark-blue dress.[240] According to another tradition, the warriors wore red rather than gold.[241] There is no need here to dwell on the ancient tradition of the purple, which was exclusive to royalty all over the ancient Near East as well as in the Classical world.[242] As already noted above,[243] red shoes were an exclusive privilege of Iranian royalty. Hilāl al-Ṣābīʾ also notes that it was 'undesirable to enter the residence wearing red sandals or shoes, because red is the color of the caliph and of those who rebel against his authority'.[244]

This colour code[245] was, no doubt, the inspiration of al-Mutawakkil's edict stating that non-Muslims were obliged to distinguish themselves through colour. According to this edict non-Muslims should wear yellow (*ʿaslī*) hoods (*ṭayālisa*), and turbans (*ʿimāma*), the women should wear yellow mantles (*izār*), and their slaves should have yellow patches on the

front and the back of their outer garments (on al-Mutawakkil's edict see above, Chapter 4).[246] When reporting about al-Mutawakkil's edict the Samaritan chronicle records that that al-Mutawakkil 'ordered that the people should wear *ghiyār*, except for the black and blue which he reserved for his faith'.[247]

It is interesting to note that yellow, the colour that was assigned to the non-Muslims, was considered a 'bad' colour in Muslim tradition. Ibn al-Washshā' in his *Kitāb ẓarf al-ẓurfāʾ* emphasizes that not only was it a colour used by women, including songstresses and female servants, but that it was used by them during times of impurity, such as menstruation and illness.[248] Al-Tirmidhī in *Abwāb al-libās* cites a *ḥadīth* that the Prophet prohibited clothes of low quality as well as yellow-coloured clothes.[249] Al-Mutawakkil exchanged the prohibition on *dhimmī*s wearing *ʿamāʾim* for a requirement that they should be honey-colored, an act that evidently emphasized the significance of the colour distinction.[250]

The use of colour as a means of distinction among the social classes was thus an ancient concept, which was adopted – and adapted – by the Muslims. It was not invented specifically for the *dhimmī*s, nor was it used only in their case. The Muslim colour code was less defined than the Iranian code; it certainly was not in use on a regular basis in order to signify position or class within Muslim society, yet, as mentioned above, it could be used as a family or political marker, and of course to designate the caliphal court, on one hand, and the *dhimmī*s, on the other. In the case of the non-Muslims, as in Iranian society there was a certain colour that marked a distinct group, defined this time not according to agnatic criteria or social position, but according to religious identity. The colour identified non-Muslims in Islamicate society, and was thus another means through which they were positioned in its hierarchy.

The last issue mentioned in this clause is the *kunya*. Patronyms were generally a respectful form of address, and were a considered a basic expression of respect and of honour. ʿAbd al-Razzāq cites a tradition against the use of *kunya*s for non-Muslims 'since they should not be glorified by a *kunya*'.[251] Ibn ʿAsākir cites another tradition in the name of Ḍamra b. Ḥabīb,[252] according to which ʿUmar said regarding *ahl al-dhimma*: 'Call them by their names and not by their *kunya*s, humiliate them but do not wrong them, and if the road brought you and them together, push them into its narrowest part.'[253]

As noted above, one of the means of humiliating *mawālī* was to forbid them to use *kunya*s.[254] Although the prohibition seems never to have been effective, as noted by Goldziher,[255] it nevertheless indicates that this was

a form of social degradation. This stress on humiliation becomes stronger in sources from the ʿAbbāsid period. Hilāl al-Ṣābiʾ reports that 'it is not customary to call anyone by his *kunya* in the presence of the caliph, unless the caliph honored him by calling him thus, and entitled him to that rank'.[256] Al-Ṭūsī says that when one is grown, 'people treat him like a man and call him by his *kunya*. Later when he has shown merit and skill in public life the king bestows upon him the honour of a title.'[257] The *kunya* thus serves as the basic title of respect in adult society. Slaves had no *kunya*s. The phrase 'we shall not adopt their *kunya*s' or literally 'we shall not be called by their *kunya*s' may be understood in more than one manner: we will not use *kunya*s at all; or we will not use Arabic *kunya*s. In both cases it is clear that non-Muslims were not meant to draw from this patronymic element the basic respect it bestowed on its owner.

Note that there is a direct analogy between the behaviour of a non-Muslim in the presence of a Muslim and the behaviour of a Muslim in the presence of the caliph. Unlike the other elements in this clause, this does not seem to stem from status symbols of the Iranian or Byzantine cultures, but rather from Arabian social tribal mores.

Clause 7: The Prohibition on Using Saddles, Girding Swords, and Carrying Arms

From ancient times,[258] horses and the equipment that accompanies horse-riding was the exclusive prerogative of the nobility in Iran. In fact, the name of the warrior class, *artēštarān*, means 'charioteers',[259] and the word *asbār/aswār*, 'horseman', actually designated 'knight' or 'nobleman',[260] while the term for foot-soldier came to mean 'commoner'. By contrast, the Roman equestrian class was considered inferior to the nobility. In Iran, a fine horse was the best gift that could be given; an Iranian noble was inseparable from his mount, and going on foot was considered undignified. Among the presents given out by Cyrus, according to Xenophon's *Cyropaedia*, were robes, bracelets, necklaces, and horses with gold-studded bridles. 'For as everybody knows, no one over there is allowed to have such things except those to whom the king had given them.'[261] According to Xenophon, all of these items were status symbols that separated the nobility from the common people. During the Sasanian period the saddle became more sophisticated and ornamental, and thus a highly prestigious article.

The Iranian perception of horses and riders was known to Muslim writers. Al-Jahshiyārī reports that in the time of the Sasanians 'no one but the king, the *kuttāb*, and the judges were authorized, to ride on gentle

ILLUSTRATION 3. A silver plate, with the Sasanian Shāpūr II hunting boars, riding his saddled, richly decorated horse in full regal attire including a bejewelled belt and dagger (from Vereino, Perm, Russia; fourth century AD. Freer Gallery of Art, Smithsonian Institution, Washington, DC: Purchase, F1934.23).

and steady horses (*ḥamālīj*)'.²⁶² Al-Balādhurī mentions that the *dihqān*s 'rode a mount and wear golden rings on their feet', both evident status symbols.²⁶³

Although horse-riding was adopted by the Arabs in the Arabian peninsula in about the fifth century CE,²⁶⁴ such formal decorum was unfamiliar to them. However, following the conquest, and due most probably to Iranian cultural influence, this prestigious riding culture was fully adopted by the Muslims and buttressed by Qur'ānic passages. Hilāl al-Ṣābi' recounts an occasion upon which a Byzantine envoy arrived at al-Muqtadir's court: 'The soldiers of different ranks and in excellent attire, were drawn up in two lines and mounted on animals with saddles

of gold and silver; and near them were the reserve horses in similar elegance, displaying many types of arms and equipment.'[265] Horses with splendid saddles were also given out as gifts, as they had been in former times.[266] The privilege of riding a horse into the palace was granted only to the vizier, and that only up to a certain point.[267] When the Ghaznavid sultans appointed important officials the masters of ceremony would call out: 'Let the horse of the *amīr* such and such be brought forth,' thus publicizing and glorifying the appointment.[268] One cannot escape the similarity to the event described in the book of Esther, which took place around 1,400 years earlier: when King Ahasuerus wanted to promote Mordechai he bestowed on him his robe, and one of his horses; Haman, while leading the horse, called out: 'Thus shall be done to the man whom the king wishes to honour' (Esther 6:9). Dismounting, or walking behind a person's horse on foot, was a sign of great respect for the person in question. Riding a mule instead of a horse was considered humiliating.

In the light of all this, it is quite clear that the insistence that *dhimmī*s should not use saddles, only pack-saddles,[269] that they should use wooden instead of iron stirrups,[270] or not ride horses at all, only mules,[271] is not simply a way of distinguishing physically between Muslims and non-Muslims, but an unequivocal statement that non-Muslims, however rich or respectable, could not employ the prestigious insignia of the nobility or upper class.

This is also the issue behind the prohibition on girding swords or carrying arms. As early as in Achaemenid Iran, girding a sword or a dagger in one's belt was a distinctive sign of nobility. Xenophon recounts how the Persian nobles arrived at court on their horses, with their spears.[272] Daggers or swords were an indispensable part of the attire of Iranian nobles throughout time.[273] In the caliph's court too, riding a horse and wearing a sword was a status symbol, employed by all those who surrounded the caliph.[274] The special sword, *al-sayf al-khāṣṣ*, was considered, in fact, one of the insignia of sovereignty, and was therefore often studded with gold and jewels.[275]

Rather than being an issue of security, therefore, wearing a sword or dagger should be considered a symbol of social status in general, and at the royal court in particular.

Clause 8: The Prohibition on Having Seals Engraved in Arabic

The seal or signet-ring – *khatam*, an Aramaic word – was an ancient symbol of authority.[276] A seal gave validity to a document, and the possession of another person's seal represented the delegation of that

person's authority. Seals were widely used in the ancient Near East from very early times. When the pharaoh appointed Joseph over 'the whole land of Egypt', he gave Joseph his signet, dressed him in splendid robes, put a gold necklace around his neck, and made him ride in the second chariot (Gen. 41:42). When Ahasuerus wanted to delegate to Esther his authority to retract his decree to annihilate the Jews in his kingdom, he said: 'Write as you please … in the name of the king, and sign it with the king's seal, since a decree written in the name of the king and sealed with the king's signet-ring cannot be retracted' (Esther 8:8). The importance of the seal is well attested by Menander Protector in his description of the signing of the 561 treaty between the Byzantines and the Persians (see Chapter 1).

Seals were also adopted by the Muslims. It is interesting to note that the earliest seals in Arabic date to the period immediately after the conquest.[277] In fact, Muslim tradition recounts that the Prophet first adopted a seal when he wanted to write to the Byzantines and they would not accept his letters unless they were signed with a seal.[278] Bearing the royal seal was a sign of royal authority. Ibn Khaldūn says that 'the [use of the] seal, which is the written signature or engraving used for closing and tying letters, was peculiar to the ministry of correspondence (*dīwān al-rasāʾil*). In the ʿAbbāsid dynasty, it belonged to the wazīr.'[279]

Having a seal in Arabic was therefore another emblem of authority, like the horse, the saddle, the girding of the sword, and various articles of clothing and other paraphernalia, and for this reason it could not allowed to a non-Muslim.

Clause 10: The Requirement to Clip the Front of the Hair

This clause represents the requirement to cut the hair across the forehead short, and needs to be attached to clause 6 regarding the hairstyle. As noted above,[280] Muslims used to wear their hair down to their shoulders and apparently parted in the middle, a hairstyle attributed to the Prophet.[281] This hairstyle also appears in representations of Iranian nobility and was, it seems, an inseparable part of their dress code.[282]

Cut forelocks mark the status of the *dhimmī*s as freed captives. The custom of cutting them is attested in early Arabic sources. Arabian tribesmen who took captives and set them free cut their forelocks first, thus displaying their generosity and their expectation of reward.[283] The non-Muslims were conquered people who owed their freedom to their Muslim captors, and were stigmatized by their cut forelocks. A *dhimmī* is therefore sometimes called *muqaṣṣaṣ* (one whose forelock has been cut off).[284]

Clause 11: The Requirement 'to Dress the Same Way Wherever We May Be and to Bind the Zunnār around Our Waists'

This is adduced in detail by Abū Yūsuf, who says: 'It should be decreed that none of them should resemble the Muslims in his dress, in his mount, and in his appearance and that they will be made to wear the *zunnār*s around their waists, like a coarse cord which each of them should tie around his waist.'[285]

In al-Mutawakkil's official decree, the command is that 'all those of this class (*ṭabaqa*) who wear the *minṭaqa* should wear *zanānīr* and *kasātīj* instead of the the *manāṭiq* that were [till now] around their waists'.[286] Three different terms are used here for a belt: *minṭaqa*, which the *dhimmī*s are forbidden to wear, and *zunnār* and the *kasatīj*, which they are now obliged to wear. What is the purpose of this decree?

The *zunnār* (pl. *zanānīr*), the girdle or waist-belt, was considered the most distinctive sign of *dhimmī* status. This, as well as additional special elements of clothing such as the variegated hats (*qalānis muḍarraba*), and doubled shoelaces (*shirāk muthniya*), were first mentioned by Abū Yūsuf in the last quarter of the eighth century.[287] As already noted in Chapter 3, 'Umar II's edict does not use the term *zunnār*, but mentions that 'they have abandoned the belts', using the term *minṭaqa* rather than *zunnār*.[288] This means that while the idea of using a belt to distinguish the non-Muslims from the Muslims was already in use in his time, the terminology was not yet established.

As Tritton said, the word *zunnār* is derived from Greek *zōnarion*, the diminutive form of *zōnē*[289] – belt in Greek. The word was adopted probably, however, via the Syriac *zūnārā*.[290] Tritton noted that monks wore such girdles around their waists, and held that this was why the *zunnār* became the identifying mark of the Christians, and eventually of all the non-Muslims. If so, the *zunnār* could be conceived as a mere distinguishing element which had nothing to do with social status: it was simply an article of clothing used by a particular group of Christians which was arbitrarily adopted as the emblem of all non-Muslims.

Religiously affiliated belts, however, are attested not only among Christians, but among Jews in Babylon and among the Zoroastrians as well. Among the Zoroastrian believers a belt called *kustīg* was an obligatory item of dress. Its purpose was to separate symbolically between the upper part – that of thought and speech – and the lower part, where the baser bodily functions take place.[291] According to chapter 38 of the *Dādestān ī dēnīg*, cited by Shaked, 'the *kustīg* is a sign of human servitude to God (*Dd* 38:2) The merit of humility in the presence of the

deity is highly extolled (*Dd* 38:5)'.[292] Passage 11 says that 'it is also not fitting to walk about ungirdled without a mark of servitude to the lord (*Dd* 38:11)'.[293]

Babylonian Jews who lived under Sasanian rule also wore belts that had religious significance, and were used in a similar manner to that of the *kustīg*, although there is no evidence that they were actually obligatory, as the *kustīg* was. This belt was called *hamyānā*, an Aramaic word borrowed from Persian.[294] Babylonian Jews also adopted the ritual of the *kustīg* practised by the Persians. Thus, according to the custom in Babylon (but not in Eretz Israel), one starts eating 'after he has undone his belt'.[295] The discussion that follows demonstrates that Jews observed the girding of the *hamyānā* before praying.[296] This was accompanied by a special blessing. Thus, in the Babylonian Talmud (Bavli), Berachot 60b it is said: 'When someone ties his girdle, he should say: "Blessed be He who girds Israel with valiance."'

Until now we have seen that religiously affiliated belts were customary not only among Christians, but among all three confessions during the Sasanian period. In all three this was a widely used accessory which exhibited the affinity of the believer to his God. These belts (including the *hamyānā*, which most probably resembled the *kustīg* outwardly) could indeed serve as characteristic items which conveniently distinguished the non-Muslims in Syria, Iraq, and Persia.

While 'Umar's edict indicates that the requirement of the *zunnār* was established at the beginning of the eighth century, the terminology distinguishing between the two developed later that century, when the Muslims adopted the terminology used by the non-Muslims for their own belts, and designated the Arab word *minṭaqa* solely for the belts of the Muslims.

According to V. Loukonine and V. Ivanov, *Persian Art*, London 2003, item no. 38, the round buckle and two hasps of this gold bejewelled Iranian belt-buckle 'are in the polychrome style characteristic of the fourth–early fifth centuries … The engraved cornelian gem on the buckle … depicts a rider at a hunt'. What is the *minṭaqa* that the non-Muslims were prohibited from wearing?

Widengren claims that in ancient Iran there were two different kinds of belts. The first was the *kustīg* or the *hamyānā*. The second was the *kamar* or *kamar-band*. In fact, both the *zunnār/kustīg* and the *kamar* began as signs of servitude: the first servitude to God, as noted above; and the latter servitude to one's master. In fact, the word *band* in *kamar-band* comes from 'bond, fetter', and is actually the belt of the *bandak*, Middle Persian for '(loyal) servant'.[297] The *kamar* (and the earrings) was the

ILLUSTRATION 4. Belt buckle. Gold, cornelian and almandine; decorated with granulation. 5.2 x 3.7 cm Iran. second–third century. Inv. No. Z_436/1,2,3 (The State Hermitage Museum, St Petersburg. Photograph © The State Hermitage Museum/Photo by Valdimir Terebenin, Leonard Kheifets, Yuri Molodkovets).

distinct symbol of the 'binding' of the nobleman to his king. All *bandakā* who entered the king's presence had to wear their belts, and all stood by him with their hands on their belts.[298] It was thus the sword belt worn by warriors of all levels; *kamar*s studded with pearls and gems were given by Parthian and Sasanian kings as a mark of distinction.[299] In the *Kāba-yi-Zardusht* inscription, line 4,[300] the priest Kartēr declares that he received such a *kamar* from the king. The *ʿArukh* – a Gaonic Jewish source – notes that under the Persian kings Jewish Exilarchs used to wear *kamar*s.[301] The clearest distinction between the *hamyānā* and the *kamar* appears in the Babylonian Talmud, Shabbat 49b, where it is asked whether one could on Shabbat wear a *kamar* on top of the *hamyānā*, the answer being that one cannot wear two *hamyānā*s! The *kamar* is described here as a gilded ornamental belt, made either of fabric or of metal, and is likened to a king's belt.[302]

As noted above, such belts were worn with daggers by the Iranian royalty and nobility. An Iranian noble would not be caught without his belt in public. *Dihqān*s, being part of the nobility, wore such belts. On one occasion, when the Muslims wanted to humiliate *dihqān*s who refused to convert to Islam, they tore their clothes and bound their belts (*manāṭiq*) around their necks.[303]

A similar belt, called the *zonē* in Greek, *cingulum* in Latin, was found in the Byzantine empire. Initially part of Roman military costume, it spread during the reigns of Diocletian and Constantine to become part of the dress of every official. The fashion became so widespread, in fact, that the state tried to restrict its use by civilians. It was at that point, it seems, that the monks, following the widespread trend, adopted the use of the girdle, viewing it as a symbol of purity, temperance, and manliness.[304] But it remained a symbol of public office. When Justinian prohibited the entry of non-Christians into public service, he said: 'nor

shall he put on an official belt (*zonē*), neither civil nor military, nor belong to any office…'.[305]

The *kamar* or *cingulum/zonē*, which served as a mark of status and distinction both in the Iranian and Byzantine empires, is, no doubt, the belt that would be called *minṭaqa* in Arabic. In the Muslim empire, the *minṭaqa* worn with a sword was a typical part of the outfit of soldiers, the officers' *manāṭiq* being studded with gems, just as the Iranian ones had been.[306] The belt and the sword were part of the official attire. Hilāl al-Ṣābi' recounts that 'on procession days, the chief chamberlain (*ḥājib*) comes fully attired in black robe and black turban, wearing sword and belt'.[307] The caliph himself, according to Hilāl, was girded with the sword of the Prophet.[308] Such decorated belts were considered not only a prestigious gift, but an emblem of authority. Thus al-Muʿtaṣim 'presented al-Afshīn with a crown (*tawwaja*), and girded him with two jeweled belts',[309] and 'installed Ashnās on a throne, awarding him a crown and a ceremonial girdle' (*wa-tawwajahu wa-washshaḥahu*).[310]

It is thus evident that the Muslims adopted this ancient distinction between the official belts of the nobility, which marked the high position of their owners, and the sacred girdles, which designated confessional identity and were worn by people of all strata of society among Zoroastrians and Jews, as well as by monks, who were both numerous and highly regarded in Christian society. The *manāṭiq*, which were the privilege of the Sasanian upper classes, became the privilege of the new upper class: the Muslims. The girdles, which had been worn in the past by the believers of various confessions of their own will, had become obligatory, and served to distinguish the non-Muslims from the Muslims, who wore no such girdles.

The imposition of the *zunnār* was therefore accompanied by the prohibition on wearing a *minṭaqa*, a prohibition which was no doubt relevant to many non-Muslims who had previously worn them to mark their distinction, and wanted to go on doing so. The *zunnār* (*kustīg/hamyānā*), the sacred girdle, common among believers of various confessions, had now become a manifestation of the new social order, a distinctive mark of the newly created lower class.

Clause 12: The Prohibitions on Processions, Clappers, Raising of the Voice, and Showing Lights
This clause is made up of several parts

    (1) The prohibition on conducting religious processions: 'We shall not display (or in other versions "take out") our crosses or our books

in the roads and markets of the Muslims ... we shall not go out
on our Easter or on Palm Sunday (*lā nakhruju bāʿūthan wa-lā
shaʿānīn*).'

(2) The prohibition on using clappers (*nawāqīs*) loudly.

(3) The prohibition on the raising of voices in church services or in the
presence of Muslims.

(4) The prohibition on the raising of voices in funerals, the prohibi-
tion on showing lights in Muslim roads or markets.

(1) The prohibition on conducting processions and that on showing
lights both need to be seen in the general context of the *mawkib* – the
procession or retinue of the ruler. Such processions had been part of
the ceremonial protocol in the Achaemenid court. Xenophon recounts
the passing of Cyrus' procession: the king rode in a chariot wearing his
tiara, dressed in purple and followed by a magnificent procession, while
soldiers and cavalry dismounted and stood along the road, their hands
thrust through their sleeves to signify their submission, 'just as they do
even to this day when the king sees them'.[311]

As mentioned above, this custom, although criticized, was adopted by
the Umayyads, along with the strict protocol observed when accompany-
ing the ruler, and especially the concept of the *tartīb*, the arrangement
according to hierarchical order, at the court and in such processions.[312]

Christian religious processions, and especially those of Palm Sunday
and Easter, were – and still are – highly formal and ceremonial in their
nature. In these processions items such as holy icons, banners, and holy
books are carried in public in an exhibitive manner. According to Abū
Yūsuf, in his chapter 'On the prayer houses and crosses', these proces-
sions included not only banners[313] (probably embroidered with icons
or saints), but arms as well. Abū Yūsuf has them agree to a surrender
agreement that:

'They will not take out their banners (*rāyāt*)[314] on their holidays, that
they will not wear arms on their holidays, nor keep them in their houses.
If they do any of these things, they will be punished and it [the peace
agreement] will be taken from them.' These were the conditions of the
agreement (*ṣulḥ*); but they said to Abū ʿUbayda: 'Set a day in the year
for us on which we can take out our crosses without banners, namely
the day of our great holiday.'[315]

Banners and flags were considered a distinctive sign of authority under
Sasanian and Muslim rule,[316] and Ibn Khaldūn lists them among the royal

insignia, along with other elements of the *āla*.³¹⁷ Military command-
ers received a white *liwā'* (standard, banner) on the occasion of their
appointment.³¹⁸ The *liwā'* was, in fact, an old symbol of royalty going
back to Parthian and Sasanian times.³¹⁹ Hilāl al-Ṣābi' mentions among
the expenditures of the caliph the costs for 'carrying the standards during
the Two Feasts' (i.e. 'Īd al-Fiṭr and 'Īd al-Aḍḥā).³²⁰

As a distinct sign of royal authority, banners and arms were to be
excluded from Christian processions, even according to the liberal
Abū Yūsuf, who, unlike the adherents of *Shurūṭ 'Umar*, supported the
endorsement of the Easter procession.

A magnificent procession organized by someone who was not autho-
rized to do so could well be considered an infringement upon royal
authority.³²¹ Hilāl al-Ṣābi' tells a story about a *qāḍī* who happened to
pass by a grand procession of one Nāzūk on his way to see the *wazīr*.
Having been delayed by the procession, he was late and had to apolo-
gize to the *wazīr* and explain, although he feared that Nāzūk would be
reprimanded for allowing himself such splendour and pomp.³²² Luckily,
Nāzūk's behaviour was excused by the *wazīr*, who said that in this mag-
nificent procession Nāzūk had in fact 'graced the state and Islam, and
spited the nose of the blasphemers and the deviators'.³²³

Ceremonial public processions were therefore considered a manifesta-
tion of sovereignty, and thus could not be a privilege of the subordinate
non-Muslims.

The prohibition on showing lights in Muslim roads or markets should
be interpreted in the context of the procession. Nāzūk's procession is
described as follows: 'He was accompanied by more than 500 attendants
carrying processional candles, and by a larger number of naphta-candle
carriers.'³²⁴ Showing lights in Muslim roads was conceived as a character-
istic element of processions, and thus a manifestation of royal authority.

(2) The prohibition on using the clappers loudly: beating drums, as
well as blowing trumpets or horns, were also royal prerogatives. In the
Sasanid army the general (*spābadh*) was the only one allowed to enter the
camp to the blowing of the trumpets.³²⁵ In the 'Abbāsid court this was
done on occasions such as the emergence of the caliph from his court, or
when a procession accompanying one of the dignitaries left the court;³²⁶
in addition, it was used as a call to prayer. Hilāl al-Ṣābi' reports that

> it was not customary in the past to beat the drums for prayer in the
> capital except for the caliph. It was later permitted for the crown princes
> and the commanders of the armies during the three prayers – the early

morning and the two evening prayers – if they were traveling or were far
from the caliphal presence … When Mu'izz al-Dawla came to power he
wished to have the drum beaten at his door in the City of Peace. He was
then living in the palace of Mu'nis, close to the Residence. He sought
the permission of al-Muṭī' li-Allah … to do so. Although they hardly
disagreed, the caliph did not grant him permission because it was not
customary.[327]

Later, special permission to beat the drums for prayers was given to cer-
tain dignitaries in specific circumstances.[328] Drums, trumpets, and other
instruments were also played on religious festivals, and other feasts,
as well as on the ruler's birthday. The beating of kettle-drums in hon-
our of the ruler and on the occasion of appointments to high positions
was an ancient practice.[329] Ibn Khaldūn notes in fact that 'the Muslims
refrained from beating the drums and blowing the trumpets at the begin-
ning of Islam. They wanted to avoid the coarseness of royal authority
and do without royal customs … The caliphate then came to be royal
authority, and the Muslims learned to esteem the splendor and luxury of
this world.'[330]

The fact that beating the drums, especially for prayer, was a preroga-
tive of the caliph clearly meant that the beating of the *nāqūs* loudly and
in public was an infringement on royal authority. This sheds light on the
instruction to beat it quietly inside. In the same vein the Samaritans were
prohibited from using the horn (*būk*) during their ritual in the reign of
Ibn Ṭūlūn, according to the Samaritan Chronicle.[331]

(3) The prohibition on raising the voice in church services (prayer
and or readings) in the presence of Muslims:[332] in Iranian culture, raising
one's voice was considered an expression of coarseness and vulgarity.
Xenophon reports in the *Cyropaedia* that Cyrus wanted to set an exam-
ple of refined and honourable manners. 'By setting such an example
Cyrus secured at court great correctness of conduct on the part of his
subordinates, who gave precedence to their superiors … And among
them you would never have detected anyone raising his voice in anger
or giving vent to his delight in boisterous laughter; but in seeing them
you would have judged that they were in truth making a noble life their
aim.'[333] Al-Mas'ūdī reports that when the shah came to sit with his court-
iers (*nudamā'*), they were ordered to keep silent and moderate their ges-
tures.[334] Pseudo-al-Jāḥiẓ instructs that in the presence of the king a man
should not rush in his speech, nor point with his hand, nor raise his voice
(*lā yarfa'u ṣawtahu*), move his head, move in his seat in any manner, or
meet the gaze of anyone present but the king.[335]

Hilāl al-Ṣābī' notes that 'when the *wazīr* speaks or converses' in the presence of the caliph 'his voice must be low, and he should not raise it except as necessary to prevent repetition or clarification'.[336] During an audience of the caliph, 'it is also the rule for the people not to speak, and that neither sound nor clamour should be heard from them'.[337] Al-Ghazālī mentions that one should not raise one's voice in the mosque.[338]

The prohibition in the *Shurūṭ* on raising the voice pertains to the prayers of non-Muslim in the presence of Muslims, presumably present in the precincts of the church. It is therefore evident that the behaviour required was that of the Muslims in the presence of the caliph and in the mosque. The Muslims did not want to be offended by the noise and clamour that the non-Muslims raised during their rituals. This is true also for the following clause, prohibiting the commotion created during funerals.

It is interesting to note that the Samaritan chronicle testifies that under the restrictions of al-Mutawakkil 'it was decreed that a man shall not raise his voice in prayer, and shall not raise voice in …,[339] a funeral shall not be seen, and a *dhimmī* shall not lift his face to a Muslim's face in order to speak or respond to him'.[340] This is repeated again later, under Ibn Ṭūlūn: 'A *dhimmī* should not raise his head in the presence of a Muslim, and he should not raise his voice in prayer.'[341] Thus, raising the voice in prayer, looking straight at a Muslim's face while speaking to him, or raising one's voice in his presence was considered insolent and disobedient behaviour, just as it was in the presence of the caliph.

The Muslim here is in fact equated with the caliph. In other words, for a non-Muslim every Muslim is a caliph or a king, and should be treated with appropriate reverence and respect. This clearly goes back to the Iranian hierarchical concept according to which 'it is fitting that the working people should salute them [the warriors] and bow before them, and that the fighting men in turn should show reverence to the nobles, and that they should have regard one for another according to the loftiness of their rank, and that they should maintain their dignity'.[342] Thus, just as the Muslim should not raise his voice in front of the caliph, so the non-Muslim should not raise his voice in front of the Muslim.

(4) Prohibition on the raising of voices in funerals: rules prohibiting noise, lamenting, wailing, songstresses, slapping oneself and other customs such as plucking the hair or rending the clothes, which were common in the *jāhiliyya*, were forbidden in Islam in theory. Muslim *sharī'a* regarding funerals drew its inspiration in this case perhaps from the rejection of *jāhilī* customs. However, although forbidden in Muslim

fiqh literature, with the exception of the Zoroastrians, lamentations and wailing continued to be a central element of the funerary ceremonies in the ancient Near East.[343]

Since this was not really accepted or abided by, it seems that the requirement that non-Muslims have quiet funeral processions was a result of the general principle that rituals and customs of the *dhimmī*s should not offend Muslim feelings or 'contaminate' the public sphere. While Muslim rituals were a public issue, those of the *dhimmī*s were tolerated only if they were performed quietly, behind closed doors. Just as non-Muslims had to make way for the Muslims, give up their seats for them, and speak quietly, so they had to keep their public rituals as invisible as possible – so as not to offend the Muslims or threaten their superiority.

CONCLUSION

In his article on *lā tashabbahū* Kister, using the example of the change in attitude to wearing shoes while praying, noted that the Muslims were actually going through a fundamental change in which 'customs initially frowned upon as an imitation of the unbelievers were actually adopted as the only form of behaviour'.[344] This was in essence what was happening in the process described here. *Shurūṭ ʿUmar* reflects a process in which Muslim society was redefining itself versus the conquered societies. During this process, various elements from the ethos and codes of the conquered were adopted by the Muslims. These adopted codes were then used to dispossess the non-Muslims of their former place in society, thus creating a new situation in which the Muslims held the superior position of rulers in Islamicate society while the non-Muslims were the ruled and subjected. Though they were protected and had certain rights, their position was considered inferior to that of all Muslims, a fact which had to be outwardly manifested in their appearance and social behaviour.

Shurūṭ ʿUmar was the document that defined this new hierarchy. It may be that the impetus for creating such a universal legal document was the process of codification of Muslim law which was based on Byzantine law, and was taking place in the second half of the eighth century CE, as has been demonstrated by Jokisch. Byzantine law is indeed reflected in *Shurūṭ ʿUmar*, and provides precedents for the clauses regarding synagogue building, slave ownership, apostasy and prevention from joining Islam. Other Muslim laws regarding non-Muslims not found in *Shurūṭ ʿUmar*, such as those relating to the prohibition on holding public office, questions of inheritance, testimony, and the defamation of Islam also originated in Byzantine law regarding non-Christians.

However, Byzantine law supplies the sources for only few of the clauses of *Shurūṭ ʿUmar*. What forms the heart of *Shurūṭ ʿUmar* are the clauses that come under the definition of *ghiyār* or distinguishing marks, the roots of which are to be found in the social ideology that prevailed in Sasanian society before the conquest, an ideology which promoted explicit distinction and immobility among the four classes of society. Having adopted this ideology, the Muslims took the place of the upper classes in Sasanian society while the non-Muslims were allotted the position of the lower class (*ṭabaqa*).

The new Muslim regulations, based on the Sasanian adaptation of the ancient Iranian codes, provided that non-Muslims not only had to dress the part of the lower class, but also had to play it. They had to clear the road for Muslims, get up for them, speak to them quietly with downcast eyes, just as Muslims did when addressing the caliph. This attitude is well exemplified in *Kitāb al-tāj*, attributed to al-Jāḥiẓ, where there is a story of a competition between Jarīr b. al-Khaṭafā and al-Akhṭal for the title of ʿAbd al-Malik's poet. When the caliph decreed that the Christian al-Akhṭal had won, he commanded that al-Akhṭal 'get up and mount upon him'. The Muslim poet refused to submit to this, and the reaction of the crowd was: 'A *ḥanīf* [non-Muslim] cannot mount upon a Muslim, and cannot have an advantage over him (*lā yarkabu al-ḥanīfu al-muslima wa-lā yaẓharu ʿalayhi*).'[345]

In practice, of course, this was much more difficult. Non-Muslims, as is well known, continued to be employed in high positions in the court, serving mainly as scribes and physicians, and often acquired the privileges that went along with these positions.

A famous case is that of Bukhtishūʿ b. Jurjīs, physician of Hārūn al-Rashīd, who received from the caliph every Muḥarram a load of new robes, gold and silver, *ṭirāz*, and other paraphernalia – all signifying his high social position, despite his being a Christian.[346] Another is that of the Jewish personal physician in the Maghrib at the time of al-Ḥākim, who was taken for a Muslim because he was dressed as a courtier.[347] Naturally, non-Muslims who had previously held respected positions were reluctant to accept the inferior status that was allocated to them in the new social hierarchy. Nevertheless, as has been demonstrated in the previous chapter, this social ideology was gradually enforced more systematically from the ninth century onwards, despite many exceptions that were continuously made in numerous situations and circumstances.

Conclusion

The definition of the social and legal status of non-Muslims in Muslim society was a product of a long and complex process which began during Muḥammad's lifetime and found expression in his various, inconsistent, statements regarding *ahl al-kitāb* to be found in the Qurʾān, as well as in the early surrender agreements that were signed in his lifetime. It was, however, during the conquests made from 634 CE onwards, when city after city fell into the hands of the Muslim conquerors, that they began to adopt a more consistent policy based on the *ṣulḥan/ʿanwatan* principle – the *ṣulḥan*, in its turn, being based on the *amān*, or promise of security given in exchange for the payment of tax by the conquered inhabitants. This basic code was applied, according to Muslim historiographic tradition, with some additional conditions and commitments that were applied at times and varied from one place to another. Muslim sources dating from the end of the eighth century CE onwards often adduce reports regarding these surrender agreements, and at times include versions of the agreements themselves.

As demonstrated in the first chapter, such codes were in fact part of an ancient diplomatic tradition, customary in the ancient Near East from the middle of the second millennium BCE. Written treaties in general, and written surrender agreements in particular, are to be found in the ancient Near East, as well as in the Graeco-Roman world, and in the Byzantine empire, its successor. Such agreements were specific and detailed, and included – besides major issues such as personal security and the safeguarding of possessions, prayer-houses, ritual and customs in return for the payment of tax – such minute details as the manner and duration of the evacuation of a certain territory, the number of hostages taken

in order to assure fulfilment of all the clauses, etc. There was a common international diplomatic terminology for use in the drafting of these documents.

The accumulated evidence points to an established procedure of surrender: representatives of the surrendering inhabitants would emerge from the city or stronghold and offer to capitulate if certain conditions were fulfilled. The general would consider these terms, and negotiations would take place. After the parties had come to an agreement, the documents would be drawn up, signed, witnessed, and sealed. Copies of these documents would be kept for reference by both parties.

There is thus not only no reason to doubt the reports regarding the specific surrender agreements adduced by the Muslim sources, but there is sound ground to support their acceptance as authentic documents which reflect an established procedure of surrender. In particular, there is no reason to mistrust the detailed agreements reported by the sources during the Muslim conquest, since these followed a long and established tradition with which the inhabitants of the surrendering settlements were thoroughly familiar, and in fact had most probably employed just two decades earlier, during the Persian conquest.

The surrender agreements were suitable to both parties at the time of the conquest: they prevented further war and bloodshed for both sides, allowing the local inhabitants to carry on with their lives, and the conquerors to continue their swift takeover, guaranteeing their rule and income, keeping the conquered territories intact and functioning, and demanding only minimal effort on their part.

It was only some time later that this situation was found to be unsuitable. When the Muslims settled down in cities and areas previously inhabited only by non-Muslims, some of the stipulations previously agreed upon were found to be offensive and inappropriate. Somewhere around the end of the first century and the beginning of the second century of Islam things had changed to such an extent that a need to redefine the status of the non-Muslims arose. The individual surrender agreements not only provided the conquered peoples with mostly liberal conditions that often infringed upon Muslim superiority, especially where public space was involved, but also formed an inconsistent and sometimes contradictory body of documents containing varying conditions and regulations concerning the non-Muslims, a situation which could not be tolerated for long. One set of rules needed to be formed and applied to all non-Muslims. The redefinition of the status of non-Muslims involved a significant discussion of such questions as

the continuing validity of the surrender agreements, on the one hand, and, on the other, the right of the Muslims to impose restrictions upon the non-Muslims living under their rule, such as for example on their right to conduct public processions on holidays, to display crosses, to sell pigs or wine, or to beat the *nāqūs* in call for prayer. This discussion, which took place in the course of the early ninth century CE, is reflected in the juristic sources; especially significant are three general documents which attempt to redefine the status of all non-Muslims under Muslim rule without differentiation or variation: the first is found in Abū Yūsuf's *Kitāb al-kharāj*; the second in al-Shāfiʿī's *Kitāb al-umm*; and the third is the well-known *Shurūṭ ʿUmar*. Although all three have traditionally borne this title, in fact only one is the canonic *Shurūṭ ʿUmar*. True, there is substantial common ground between the three; they all emphasize the importance of the *ghiyār* and accept the ideology of the superiority of Islam which it is meant to convey. But the first two texts represent in certain cases different, and more lenient, attitudes to non-Muslims.

As regards the origins of *Shurūṭ ʿUmar* an exhaustive search for a similar legal document regarding the status of a minority or subordinate group in earlier or contemporaneous Mediterranean or Near Eastern societies produced no result. In this respect, therefore, *Shurūṭ ʿUmar* seems to be a unique document. Nevertheless, there were separate rules and regulations in various legal traditions pertaining to certain minorities or groups in society such as the *metoikoi* in Athens, the *gerim* in Israel, and the Jews and Samaritans under Byzantine rule. Sasanian policy towards non-Zoroastrians seems, on the other hand, to have been often less regulated. A few of the clauses in *Shurūṭ ʿUmar* such as the right to keep synagogues and churches in their original state but not to renovate them, the prohibition on the conversion of Muslims to other religions, or the taking of slaves allotted to Muslims, have parallels in Byzantine law. Clauses regarding the selling of wine and pigs, the display of crosses or polytheism have to do with the defamation of Islam, and may well have been inspired by similar clauses regarding the defamation of Christianity in Byzantine law.

In addition, there are several additional Muslim laws regarding non-Muslims that have close parallels in Byzantine laws, but which do not appear in the *Shurūṭ*, most probably because these laws were a Muslim rather than non-Muslim responsibility. These include issues such as the holding of public office, the testimony of non-Muslims, the holding of slaves, and the right of inheritance between Muslims and non-Muslims.

The bulk of the clauses in *Shurūṭ ʿUmar*, however, pertaining to the presence, dress, appearance, and behaviour of *dhimmī*s in the Muslim public sphere cannot be traced back to such laws. They include such issues as the obligation to show respect to Muslims and give them priority in seating, the requirement not to resemble Muslims in dress, hairstyle, speech, or *kunya*s; the prohibition on using saddles and on bearing swords or carrying arms; the prohibition on having seals engraved in Arabic; the demand to clip the front of the hair, to dress in a certain manner and to bind the *zunnār*; the prohibitions on conducting religious processions, especially on Palm Sunday and at Easter, on using the clappers loudly; on the raising of the voice in church services or in the presence of Muslims, in funerals, or on holding processions accompanied by processional candles or torches in Muslim roads or markets.

This central part of the *Shurūṭ* was, in fact, an expression of a new social order that evolved in the course of the eighth century, a social order whose roots were deeply entrenched in Persian social ethos and mores. The status of the non-Muslims in Muslim society was now defined according to the social ideology that had existed in Sasanian society before the conquest. According to this ideology, society was divided into four hierarchical classes with no mobility between them. Articles of appearance and modes of behaviour distinguished clearly between these classes, and prevented any confusion or vagueness. Thus, ancient Persian symbols of status and sovereignty such as elements of dress and paraphernalia, riding-beasts and riding-gear, hairstyle, titles, respectable seats, and any other manifestations of authority and status were forbidden to non-Muslims, and were appropriated exclusively by the Muslims. Non-Muslims, in contrast, had to wear distinctive clothes which suited their inferior position in society; just as in Sasanian society the lower class had to dress in a manner reflecting their low social station. The concept of *ghiyār* or 'distinguishing marks' was in fact an established principle in Persian society, where 'a visible and general *distinction*' had to be made between men of noble birth and common people with regard to horses, clothes, ornaments, houses and gardens, women and servants, drinking-places, sitting- and standing-places.

The Muslims had therefore adopted concepts, values, and status symbols from Sasanian society, and used them as a means of establishing their own superiority. *Shurūṭ ʿUmar* thus reflects the completion of a process in which Muslim society was redefining itself versus the conquered societies. In this new order, the Muslims took the place of the upper classes in Sasanian society – the priests, the warriors, and the scribes – while the

non-Muslims were allotted the place of the lowest caste in society: the peasants.

It should be remarked here that although it also possessed some of the relevant status symbols at the time, Byzantine society was not distinctly hierarchical, and dress and appearance played a much less central role than in Sasanian society. There was comparative social mobility, and status symbols did not emanate from the class one was born into, but rather from the position one managed to acquire. They were thus part of the office rather than the social class.

The process of adoption of this Sasanian ideology began with ʿUmar b. ʿAbd al-ʿAzīz, who took the initial steps and issued the first edict listing a set of demands regarding the appearance of non-Muslims in public, the *ghiyār*, as parcel of his adoption and implementation of the ideology of the 'Chosen People'. According to this ideology, as a result of the gift of Islam the followers of Muḥammad were exalted to this superior position in the world, while the others were to be deprived of the bounties and advantages they had previously possessed, and were to be degraded and humiliated. ʿUmar's ingenuity is manifest in the idea that he appropriated the Sasanian social dress and behaviour code not to distinguish between strata within Muslim society, but rather to highlight the exclusion of the non-Muslims. Unlike many other rules, this social code became unanimously accepted, and is the one issue that is in total agreement between Abū Yūsuf, al-Shāfiʿī, and the *Shurūṭ*.

The first series of regulations in the spirit of the *Shurūṭ* was the set of restrictions issued by the caliph al-Mutawakkil. New evidence based on a Samaritan chronicle from the early Muslim period, in addition to well-known evidence in other sources, show that these regulations were renewed and enforced with some frequency between the reigns of al-Mutawakkil and al-Ḥākim, at least in lands controlled by the caliph and the rulers of Egypt. Although the attempt to impose the *Shurūṭ* was only a partial success in some cases, the attempts show that it was increasingly coming to be seen as a set of authoritative rules which had to be observed in practice.

On a more general level, the conclusion that may be drawn from this study is that the Muslims did not dictate the terms of the relationship unilaterally and arbitrarily, but that it was the product of a constant process of exchange – and sometimes of negotiation – between the conquerors and the conquered. The Muslims were deeply aware of the local cultures. They chose to espouse some of their concepts, customs, and institutions, adapting them to their own needs, while rejecting others. This occurred

consciously and intentionally in some cases, and unconsciously and inadvertently in others. It must be stressed that even before the conquest the Muslims were not unfamiliar with these cultures; this process naturally became much more intensive with the progress of their conquest and consequent settlement in the conquered lands. The emergence of the regulation of the non-Muslims in this regard is just one case in point which reveals that Islamic culture and society were forged within the milieu of conquest and that the various populations which came under Muslim domination had played a major role in their formation.

Appendix I

Al-Ṭurṭūshī's Version of Shurūṭ ʿUmar

The translation of *Shurūṭ ʿUmar* adduced here is based on Bernard Lewis's translation of al-Ṭurṭūshī's version in *Sirāj al-mulūk* (Lewis, *Islam*, pp. 217–19). The list of restrictions in the text is divided into clauses by the author for reference only, and is not found in the original. Select additions are given in parentheses: IM=Ibn al-Murajjā, *Faḍāʾil bayt al-maqdis*; IQ=Ibn Qayyim al-Jawziyya, *Aḥkām ahl al-dhimma*. For citations of the main versions of the *Shurūṭ*, see the introduction, n. 3.

SHURŪṬ ʿUMAR

We heard from ʿAbd al-Raḥmān b. Ghanam [d. 78/697] as follows: When ʿUmar b. al-Khaṭṭāb, may God be pleased with him, accorded a peace to the Christians of Syria, we wrote to him as follows:

In the name of God, the Merciful and Compassionate. This is a letter to the servant of God ʿUmar, Commander of the Faithful, from the Christians of such-and-such a city. When you came against us we asked you for safe-conduct (*amān*) for ourselves, our descendants, our property, and the people of our community, and we undertook the following obligations toward you:

1. We shall not build, in our cities or in their neighbourhood, new monasteries, churches, convents, or monks' cells, nor shall we repair, by day or by night, such of them as fall in ruins or are situated in the quarters of the Muslims.
2. We shall keep our gates open wide for passersby and travellers. We shall give board and lodging to all Muslims who pass our way for three days. We shall not give shelter in our churches or in our dwellings to any spy, nor hide him from the Muslims.

3. We shall not teach the Qurʾān to our children.
4. We shall not manifest our religion publicly nor convert anyone to it. We shall not prevent any of our kin from entering Islam if they wish it.
5. We shall show respect towards the Muslims [IM: and we shall show them the way], and we shall rise from our seats when they wish to sit.
6. We shall not seek to resemble the Muslims by imitating any of their garments, the *qalansuwa*, the turban, footwear, or the parting of the hair. We shall not speak as they do, nor shall we adopt their *kunya*s.
7. We shall not mount on saddles, nor shall we gird swords nor bear any kind of arms nor carry them on our persons.
8. We shall not engrave Arabic inscriptions on our seals.
9. We shall not sell fermented drinks [IM, IQ: nor shall we keep pigs in their vicinity].
10. We shall clip the fronts of our heads.
11. We shall always dress in the same way wherever we may be, and we shall bind the *zunnār* round our waists.
12. (a) We shall not display our crosses or our books in the roads or markets of the Muslims [IM, IQ: nor shall we conduct processions (lit. go out) on Palm Sunday and Easter].
    (b) We shall only use clappers in our churches very softly [IM, IQ: and we shall not display the cross on them].
    (c) We shall not raise our voices in our church services or in the presence of Muslims, nor shall we raise our voices when following our dead.
    (d) We shall not show lights on any of the roads of the Muslims or in their markets.
    (e) We shall not bury our dead near the Muslims.
13. We shall not take slaves who have been allotted to the Muslims.
14. We shall not build houses overtopping the houses of the Muslims.

When I brought this letter to ʿUmar, may God be pleased with him, he added: 'We shall not strike any Muslim.'

We accept these conditions for ourselves and for the people of our community, and in return we receive safe-conduct. If in any way we violate these undertakings for which we ourselves stand surety, we forfeit our covenant (*dhimma*), and we become liable to the penalties for contumacy and sedition.

Appendix II

Al-Shāfiʿī's Version of the Pact to Be Accorded to Non-Muslim Subjects

The document adduced here is based on Bernard Lewis's translation of al-Shāfiʿī's version of the pact to be accorded to the Christians by the *imām* given in *Kitāb al-umm* (see Lewis, *Islam*, pp. 219–23).

If the *Imām* wishes to write a document for the poll-tax (*jizya*) of non-Muslims, he should write:

In the name of God, the Merciful and the Compassionate.

This is a document written by the servant of God so-and-so, Commander of the Faithful, on the 2nd of the month of Rabīʿ I, in the year such-and-such, to so-and-so son of so-and-so, the Christian, of the descendants of such-and-such, of the people of the city of so-and-so.

I accord to you and to the Christians of the city so-and-so that which is accorded to the *dhimmī*s, in conformity with what you have given to me and the conditions I have laid down concerning what is due to you and to them, and I have agreed to your request and accorded to you and to them, on behalf of myself and of all the Muslims, safe-conduct (*amān*), for as long as you and they maintain all that we have required of you, namely:

You will be subject to the authority of Islam and to no contrary authority. You will not refuse to carry out any obligation which we think fit to impose upon you by virtue of this authority.

If any one of you speaks improperly of Muḥammad, may God bless and save him, the Book of God, or of His religion, he forfeits the

protection (*dhimma*) of God, of the Commander of the Faithful, and of all the Muslims; he has contravened the conditions upon which he was given his safe-conduct; his property and his life are at the disposal of the Commander of the Faithful, like the property and lives of the people of the house of war (*dār al-ḥarb*).

If one of them commits fornication with a Muslim woman or goes through a form of marriage with her or robs a Muslim on the highway or subverts a Muslim from his religion or gives aid to those who made war against the Muslims by fighting with them or by showing them the weak points of the Muslims, or by harbouring their spies, he has contravened his pact (*ʿahd*), and his life and his property are at the disposal of the Muslims.

If he commits some lesser offence against the property or the honour of a Muslim or against an infidel under Muslim protection, with a pact or safe-conduct, he shall be punished.

We shall supervise all your dealings with Muslims. If there is anything in which you are engaged which is not lawful for a Muslim, we shall reject it and punish you for it. If you sell a Muslim something we hold forbidden, such as wine, pig, blood, or carrion, and the like, we shall annul the sale, confiscate the price if it has been paid, and not return the thing to you if it still exists, but pour it out if it is wine or blood and burn it if it is carrion; if the purchaser has already consumed it, we shall not oblige him to pay for it, but we shall punish you for it.

You shall not give a Muslim anything to eat or drink which is forbidden, nor marry him in the presence of witnesses chosen from among you, nor by wedding rites we hold to be invalid.

We shall not supervise transactions between you and your co-religionists or other unbelievers nor inquire into them as long as you are content. If the buyer or the seller among you desires the annulment of a sale and comes to us to ask for this, we shall annul it or uphold it in accordance with the provisions of our law. But if the payment has been made and the purchase consumed, we shall not order restitution, for this would count as a completed sale between polytheists.

If one of you or any other unbeliever applies to us for judgment, we shall adjudicate according to the law of Islam. But if he does not come to us, we shall not intervene among you.

If you commit manslaughter against a Muslim or a protected person (*muʿāhad*), whether protected by you or by others, your clan is liable for the blood price as with the Muslims. Your clan consists of your paternal kinsmen. If the offender is one of you who has no kin, he himself is liable

for the blood price with his own property. If he kills with intent, he is subject to retaliation unless the heirs are content to receive the blood price, in which case they must get it at once.

If any of you steals and the victim takes him before a judge, his hand shall be cut off if his crime is punishable by this penalty, and he shall make restitution.

If anyone commits slander and a legal penalty (*ḥadd*) is due, it shall be inflicted on him; if there is no legal penalty, he shall be punished at discretion so that the laws of Islam may be applied among you in these matters, both specified and unspecified.

You may not display crosses in Muslim cities, nor proclaim polytheism, nor build churches or meeting-places for your prayers, nor strike clappers, nor proclaim your polytheistic beliefs on the subject of Jesus, son of Miriam, or any other to a Muslim.

You shall wear the girdle (*zunnār*) over all your garments, your cloaks and the rest, so that the girdles are not hidden. You shall differentiate yourselves by your saddles and your mounts, and you shall distinguish your and their headgear (*qalansuwa*) by a mark which you shall place on your headgear. You shall not occupy the middle of the road or the seats in the market, obstructing Muslims.

Every free adult male of sound mind among you shall have to pay a poll-tax (*jizya*) of one *dīnār*, in good coin, at the beginning of each year. He shall not be able to leave his city until he pays his poll-tax or appoints someone to pay it on his behalf, with no further liability until the beginning of the year. The poor among you is liable for the poll-tax, which should be paid for him. Poverty does not free you from any obligation, nor does it abrogate your pact (*dhimma*) … You are subject to no taxes on your money other than the poll-tax as long as you stay in your country or travel around in the lands of the Muslims otherwise than as a merchant. You may in no circumstances enter Mecca. If you travel for trade, you shall pay the Muslims a tenth part of all your merchandise. You may go wherever you wish in the lands of the Muslims, except Mecca, and reside wherever you wish in the lands of the Muslims, except the Ḥijāz, where you may only stay for three days in any city, after which you must leave.

Whoever has hair under his garments, has attained puberty, or has completed his fifteenth year before this, is subject to these conditions if he accepts them. If he does not accept them, he has no covenant.

Your children under age, boys below puberty, persons of unsound mind, and slaves are not liable for the poll-tax. But if the madman

recovers his reason, the child attains puberty, or the slave is emancipated and follows your religion, they are all liable for the poll-tax.

These conditions are binding on you and on those who have accepted them. Those who reject them we cast out.

We owe you protection for yourselves and for your property which it is lawful for you to hold according to our laws, against anybody, Muslim or other, who seeks to wrong you, as we would protect our own persons and property, and we administer justice to you in matters under our own jurisdiction as we would do with our own property. But no one among you can ask us to protect any forbidden thing which you own, such as blood, carrion, wine, or pigs, as we would protect lawful property. We shall not prevent you from having them, but we shall not allow you to display them in the cities of the Muslims. If a Muslim or any other buys such merchandise we shall not compel him to pay the price, because these are forbidden things and therefore have no price which could be legally enforced. But we shall restrain him from troubling you in this, and if he persists he shall be punished, though not by enforcing payment for what he took from you.

You must observe all the conditions which we have imposed.

You may not deceive a Muslim nor give aid to their enemies by word or deed.

This is the pact and covenant of God, and the greatest obligation to respect this covenant which God has ever imposed on any of His creatures. You have the pact and covenant of God, the protection (*dhimma*) of so-and-so, Commander of the Faithful, and the protection of the Muslims to carry out their obligations toward you.

Those of your children who reach the age of puberty are in the same position as you are, in regard to what we have given to you and in the obligation to observe all the conditions which we have laid down for you.

If you change or modify anything, then the protection of God, of so-and-so the Commander of the Faithful, and of the Muslims shall be withdrawn from you. If anyone of those to whom we gave this was not present when we wrote it, and hears of it and accepts it, the conditions stated in it are binding on him and on us. If he does not accept it, we cast him out.

Witnesses.

Notes

Introduction

1. See, for example, the *Doctrina Iacobi Nuper Baptisati* in Gilbert Dagron and Vincent Déroche, 'Juifs et chrétiens dans l'Orient du VIIe siècle', *Travaux et Mémoires*, 11 (1991), pp. 47–229, at p. 209; for an English translation see R. G. Hoyland, *Seeing Islam as Others Saw it*, Princeton 1997, pp. 57–8; the sermons and letters of Sophronius, Patriarch of Jerusalem during the conquest, in Hoyland, *Seeing Islam*, pp. 67–73, and many other sources cited and surveyed by Hoyland.

2. M. Levy-Rubin, 'Changes in the Settlement Pattern of Palestine Following the Arab Conquest', in K. Holum and H. Lapin, eds., *Shaping the East*, forthcoming.

3. Throughout this book the term *Shurūṭ* will refer only to the canonical text defining the status of non-Muslims under Muslim rule. This text is cited among many others by Abū Bakr al-Khallāl, *Ahl al-milal wa-al-ridda wa-al-zanādika wa-ṭarīq al-ṣalāt wa-al-farāʾid min kitāb al-jāmiʿ lil-Khallāl Abī Bakr Aḥmad b. Ḥārūn b. Yazīd al-Baghdadī al-Ḥanbalī*, 2 vols., ed. Ibrāhīm b. Ḥamd b. Sulṭān, Riyadh 1996; Abū al-Maʿālī al-Musharraf b. al-Murajjā b. Ibrāhīm al-Maqdisī, *Faḍāʾil bayt al-maqdis wa-al-khalīl wa-faḍāʾil al-shām*, ed. O. Livne-Kafrī, Shfaram 1995, pp. 55–6; Abū al-Qāsim ʿAlī b. al-Ḥasan b. ʿAsākir, *Taʾrīkh madinat dimashq*, Beirut 1995, vol. II, 120, 174–9 (includes five different versions of the document); ʿAlī b. Aḥmad b. Ḥazm, *al-Muḥallā*, ed. Aḥmad Muḥammad Shakir, Beirut 1980, vol. VIII, pp. 346–7; Ibn Qayyim al-Jawziyya, *Aḥkām ahl al-dhimma*, Damascus 1961, vol. II, pp. 657–62 (two versions).

   The name does not refer to various other documents which try to do the same but have not been canonized such as, for example, the document adduced by Abū ʿAbdallāh Muḥammad b. Idrīs al-Shāfiʿī's *Kitāb al-umm*, Cairo 1968, vol. IV, pp. 118–19, trans. in B. Lewis, *Islam from the Prophet Muḥammad to the Capture of Constantinople*, New York 1974, vol. II, pp. 219–23; or the one cited by Yaʿqūb b. Ibrāhīm Abū Yūsuf in *Kitāb al-kharāj*, Cairo 1353 H, pp. 138–9. This issue is discussed in Chapter 2.

4. The most important works on the subject are A. S. Tritton, *The Caliphs and their Non-Muslim Subjects*, London 1930; H. Zayāt, 'Simāt al-naṣārā wa-al-yahūd fī al-islām: al-ṣalīb wa-al-zunnār, wa-al-ʿamāma wa-al-ghiyār; shurūṭ al-ʿumariyya', *al-Machriq*, 43/2 (1949), pp. 161–252; E. Strauss (Ashtor), 'The Social Isolation of Ahl al-Dhimma', in O. Komlós, ed., *Études orientales à la mémoire de Paul Hirschler*, Budapest 1950, pp. 73–94; A. Fattal, *Le statut légal des non-musulmans en pays d'Islam*, Beirut 1955, esp. pp. 60–9; A. Noth, 'Abgrenzungsprobleme zwischen Muslimen und nicht-Muslimen: Die "Bedingungen ʿUmars (aš-šurūṭ al-ʿumariyya)" unter einem anderen Aspekt gelesen', *Jerusalem Studies in Arabic and Islam*, 9 (1987), pp. 290–315, trans. M. Muelhaeusler in R. G. Hoyland, ed., *Muslims and Others in Early Islamic Society*, Ashgate 2004, pp. 103–24; M. R. Cohen, *Under Crescent and Cross: The Jews in the Middle Ages*, Princeton 1994, pp. 54–74; M. R. Cohen, 'What was the Pact of ʿUmar? A Literary-Historical Study', *Jerusalem Studies in Arabic and Islam*, 23 (1999), pp. 100–57; M. R. Cohen, 'Islamic Attitudes and Policies', in *The Cambridge History of Judaism: Jews in the Medieval Islamic World*, vol. V: Robert Chazan and Marina Rustow, eds., *The Medieval Period, Seventh through Fifteenth Centuries*, forthcoming; Y. Friedmann, *Tolerance and Coercion in Islam*, Cambridge 2003; M. Levy-Rubin, '*Shurūṭ ʿUmar* and its Alternatives: The Legal Debate throughout the Eighth and Ninth Centuries over the Status of the *Dhimmīs*', *Jerusalem Studies in Arabic and Islam*, 30 (2005), pp. 170–206; Daniel E. Miller, 'From Catalogue to Codes to Canon: The Rise of the Petition to ʿUmar among Legal Traditions Governing non-Muslims in Medieval Islamicate Societies', Ph.D. thesis, University of Missouri-Kansas City, 2000 (I owe thanks to Prof. Mark Cohen for referring me to this work).

5. These will be discussed in detail in the book.

6. On ʿUmar's image in Muslim historiography and tradition see A. Ḥakim, "ʿUmar b. al-Khaṭṭāb: Some Aspects of his Image as an Ideal Leader in Early Islamic Traditions', Ph.D. thesis, Tel-Aviv University, 2002 (Hebrew).

7. Tritton, *The Caliphs*, p. 12; Fattal, *Le statut*, p. 68.

8. See Noth, 'Abgrenzungsprobleme'; see chap. 2.

9. Cohen, *Under Crescent and Cross*, p. 57. See his comprehensive discussion of the petition form of the *Shurūṭ* in Cohen, 'What was the Pact of ʿUmar?'.

10. This is the text called '*Juzʾ fīhi shurūṭ al-naṣārā*', attributed in the text to Qāḍī Abū Muḥammad ʿAbd Allāh b. Aḥmad b. Zabr al-Qāḍī, 255–329/870–940; Cohen, 'What was the Pact of ʿUmar?', pp. 110–16, 131–57.

11. See Noth, 'Abgrenzungsprobleme'.

12. Miller, 'From Catalogue to Codes to Canon', pp. 3–5.

13. For bibliography, see chap. 1.

14. P. Crone and M. Cook, *Hagarism: The Making of the Islamic World*, Cambridge 1977.

15. See Michael G. Morony, *Iraq After the Muslim Conquest*, Princeton 1984.

16. See e.g. L. I. Conrad, 'Theophanes and the Arabic Historical Tradition: Some Indications of Intercultural Transmission', *Byzantinische Forschungen*, 15 (1990), pp. 1–44; L. I. Conrad, 'The Conquest of Arwād: A Source-Critical Study in the Historiography of the Early Medieval Near-East', in A. Cameron

and L. I. Conrad, eds., *The Byzantine and Early Islamic Near-East*, Studies in Late Antiquity and Early Islam 1, Princeton 1992, vol. I, pp. 317–401.

17. Hoyland, *Seeing Islam*.

18. Chase F. Robinson, *Empire and Elites after the Muslim Conquest: The Transformation of Northern Mesopotamia*, Cambridge 2000.

19. For examples of such uses of historical researches towards political ends see M. R. Cohen, 'The Neo-Lachrymose Conception of Jewish Arab History', *Tikkun*, 1/2 (May–June 1991), pp. 11–16.

1. The Roots and Authenticity of the Surrender Agreements in the Seventh Century

1. See A. Noth, 'Die literarische überlieferten Verträge der Eroberungszeit als historische Quellen für die Behandlung der unterworfenen Nicht-Muslims durch ihre neuen muslimischen Oberherren', in T. Nagel *et al.*, eds., *Studien zum Minderheitenproblem im Islam*, vol. I, Bonn 1973, pp. 282–304, including a comprehensive bibliography; see also D. Hill, *The Termination of Hostilities in the Early Arab Conquests, 634–656 AD*, London 1971.

2. Fattal, *Le statut*, p. 58: 'Celle-ci n'est pas un traité en bonne et due forme; elle ne porte ni date ni limite de temps; elle n'est pas toujours écrit. Rares sont ceux qui écrivent l'arabe à cette époque, et plus sont ceux qui le lisent parmi les Byzantines et les Iraniens. Les termes de la convention sont généralement brefs et vagues; les textes les plus précis et les plus détaillés sont les plus suspects.'

3. On this treaty see also below; on the term *baqṭ* see pp. 34–5, 39.

4. See M. Hinds and H. Sakkout, 'A Letter from the Governor of Egypt to the King of Nubia and Muqurra concerning Egyptian–Nubian Relations in 141/758', in W. al-Qāḍī, ed., *Studia Arabica and Islamica: Festschrift for Iḥsān ʿAbbās*, Beirut 1981, pp. 209–29, esp. p. 211, citing P. M. Holt, 'The Nilotic Sudan', in *The Cambridge History of Islam*, vol. II: P. M. Holt, Bernard W. Lewis, and B. Lewis, eds., *The Further Islamic Lands, Islamic Society and Civilization*, Cambridge 1970, pp. 327–44, at p. 328; M. Brett, 'The Arab Conquest and the Rise of Islam in North Africa', in *The Cambridge History of Africa*, vol. II: J. D. Fage, ed., *c. 500 BC–AD 1050*, Cambridge 1978, pp. 490–555, at p. 506.

5. 'The early Abbasid period witnessed the creation of the since authoritative structure of Islamic law … A by-product of the search for certitude concerning prophetic precedent was thus a magnificent efflorescence of history-writing, in which the careful scholarly reconstruction of the story of the creation of the Nubian *baqṭ* formed one very small episode': J. Spaulding, 'Medieval Christian Nubia and the Islamic World: A Reconsideration of the Baqt Treaty', *International Journal of African Historical Studies*, 28 (1995), pp. 577–94, at p. 577.

6. Hinds and Sakkout, 'A Letter', p. 220, l. 19: '*al-baqṭ alladhī ṣuliḥtum ʿalayhi*' (the *baqṭ* about which a peace agreement was made with you); and l. 53–4: '*fa-innahu qad dhakara lī inna ʿalaykum baqṭ sanīn lam tuʾaddūhu wa-ma baʿathtum bihi min al-baqṭ*' (For he [Salm] mentioned to me that you are liable to the *baqṭ* of outstanding years, which you have not made over).

7. Ibid., p. 224, l. 63.
8. See Noth, 'Verträge'; Albrecht Noth, *Quellenkritische Studien zu Themen, Formen und Tendenzen frühislamischer Geschichtsüberlieferung*, part 1: *Themen und Formen*, Bonner Orientalische Studien 25, Bonn 1973, pp. 60–71; Wadād al-Qāḍī, '*Madkhal ilā dirāsat ʿuhūd al-ṣulḥ al-islāmiyya zaman al-futūḥ*', in M. A. Bakhit and I. Abbas, eds., *Proceedings of the Second Symposium (4th conference) on the History of Bilād al-Shām during the Early Muslim Period up to 40 AH/640 AD*, vol. II (Arabic), Amman 1987, pp. 193–269.
9. Noth, 'Verträge', pp. 305–6. Noth also refers here to the agreement of al-Shām cited by Abū Yūsuf in *Kitāb al-kharāj* which is probably a later revision of an agreement: on this see Levy-Rubin, *Shurūṭ*, pp. 198–9. The other agreement cited, that of al-Raqqa, as presented in Aḥmad b. Yaḥyā al-Balādhurī, *Kitāb futūḥ al-buldān*, ed. M. J. de Goeje, Leiden 1866, p. 173, is an exception, and is certainly forged, as Noth claims, since it includes the prohibition on building new prayer houses, exhibiting the *nāqūs* and the cross, and holding Easter processions.
10. Noth, 'Verträge', p. 286.
11. Qāḍī, '*Madkhal*'.
12. Regarding early legal documents in Islam see M. Lecker, 'A Pre-Islamic Endowment Deed in Arabic Regarding *al-Waḥīda* in the Ḥijāz', paper presented at the Huitièmes Rencontres Sabééenes, Aix-en-Provence, 2003; repr. in M. Lecker, *People, Tribes and Society in Arabia Around the Time of Muḥammad*, Aldershot: Variorum 2005, IV; M. Lecker, *The 'Constitution of Medina'*, Princeton 2004.
13. For a short survey and bibliography of the history of international treaties in the ancient Near East as well as in Greece, the Hellenistic world, and Rome see Peter Kehne *et al.*, 'International Treaties', in H. Cancik, H. Schneider, eds., *Brill's New Pauly*, Antiquity volumes, Leiden 2010, and bibliography.
14. See Peter Kehne, 'Treaties, Upholding of', in ibid. For a good and compact survey and bibliography regarding the Ancient Near East see D. L. Magnetti, 'The Function of the Oath in the Ancient Near Eastern International Treaty', *American Journal of International Law*, 72 (1978), pp. 815–29; C. Phillipson, *The International Law and Custom of Ancient Greece and Rome*, London 1911, vol. I, pp. 375–419.
15. See e.g. the treaty with Carthage, Polybius, *Histories*, 3.22; 3.24; 3.25, trans. in A. C. Johnson, P. Robinson Coleman-Norton, and F. C. Bourne, *Ancient Roman Statutes*, Austin 1961; Poly. 3.27, trans. in Johnson *et al.*, *Statutes*, no. 13; with the Aetolians, Livy 38.11; Poly. 21.32, trans. Johnson *et al.*, *Statutes*, no. 24; or with Antiochus III, Livy 38.38; Poly. 21.42, trans. Johnson *et al.*, *Statutes*, no. 27.
16. See M. Weinfeld, 'Covenant Terminology in the Ancient Near East and its Influence on the West', *Journal of the American Oriental Society*, 93 (1973), pp. 190–9.
17. Ibn Hishām, *al-Sīra al-nabawiyya*, vol. IV, Beirut 1411 H, p. 143, cited later by others.

18. See S. Shaked, 'From Iran to Islam: Notes on Some Themes in Transmission', *Jerusalem Studies in Arabic and Islam*, 4 (1984), pp. 31–67, at pp. 34–5, n. 17.
19. Weinfeld, 'Covenant Terminology', n. 15.
20. On these see B. Dignas and E. Winter, *Rome and Persia in Late Antiquity*, Cambridge 2007, pp. 119–51; R. Blockley, *East Roman Foreign Policy*, Leeds 1992, pp. 5–66. The existence of such treaties prior to the Muslim conquest has already been noted by Chase Robinson. See Robinson, *Empire and Elites*, pp. 6–7.
21. See Blockley, *Policy*, pp. 151–8; see D. A. Miller, 'Byzantine Treaties and Treaty-Making: 500–1025 AD', *Byzantino-Slavica*, 32 (1971), pp. 56–76; E. Chrysos, 'Byzantine Diplomacy, AD 300–800: Means and Ends', in J. Shepard and S. Franklin, eds., *Byzantine Diplomacy*, Aldershot 1992, pp. 25–39, at p. 30.
22. E.g. the exchange of letters between Shāpūr and Constantius in 357–8 which ended in failure in Ammianus Marcellinus, *Ammianus Marcellinus*, XVII.5.1–XVII.5.15, Latin text with Eng. trans. by J. C. Rolfe, Loeb Classical Library, London 1950–2, vol. I, pp. 332–9; Chosroes' exchange of letters with Mauritius in 590 in Theophylactus, *Theophylacti Simocattae Historiae*, ed. C. De Boor, re-ed. P. Wirth, Stuttgart 1972, IV.10.7–IV.14.5, trans. M. and M. Whitby as *The History of Theophylact Simocatta*, Oxford 1986, pp. 116–123. For letters that ratify agreements, see below the examples of the treaties of 363 and 562.
23. See P. Huyse, *Die dreisprachige Inschrift Šābuhrs I. an der Kāba-i-Zaradušt*, Corpus Inscriptionum Iranicarum, part III: *Pahlavi Inscriptions*, vol. I, London 1999; Dignas and Winter, *Rome and Persia*, pp. 119–22; see also Z. Rubin, 'Nobility, Monarchy and Legitimation under the Later Sasanians', in John Haldon and L. I. Conrad, eds., *The Byzantine and Early Islamic Near-East VI: Elites Old and New in the Byzantine and Early Islamic Near-East*, Studies in Late Antiquity and Early Islam 1, Princeton 2004, pp. 235–73, at pp. 243–4.
24. Rubin, 'Nobility', p. 122, n. 14, citing L. Trümplemann, 'Triumph über Julian Apostata', *Jahrbuch für Numismatik und Geldgeschichte*, 25 (1975), p. 115.
25. See Blockley, *Policy*, pp. 5–7, 157–8; Dignas and Winter, *Rome and Persia*, pp. 122–30.
26. See Blockley, *Policy*, p. 136.
27. For an English translation of his description see Dignas and Winter, *Rome and Persia*, pp. 122–4.
28. Ammianus, *Ammianus Marcellinus*, XXV.7.5–XXV.7.13, trans. Rolfe, vol. II, pp. 530–6.
29. Eutropius also calls this treaty '*pax ignobilis*': *Eutropi Breviarium ab urbe condita*, ed. F. Ruehl, Leipzig 1919, X, 17, trans. H. W. Bird as *The Breviarium ab urbe condita of Eutropius, the Right Honourable Secretary of State for General Petitions: Dedicated to Lord Valens, Gothicus Maximus and Perpetual Emperor*, Liverpool 1993, p. 69, as does also Agathias, IV.25.7, ed. and trans. R. Keydell, *Agathiae myrinaei historiarum libri quinque*, Berlin 1967, text vol. I, pp. 155–6, trans. vol. II, p. 128.

30. Ammianus, *Ammianus Marcellinus*, XXV.7.13–14, trans. Rolfe, vol. II, pp. 534–6.
31. Zosimus, 3.31, text B. Kindt, F. van Haeperen and CENTAL, eds., *Thesaurus Zosimi, Historia Nova*, Louvain-la-Neuve 2008, trans. R. T. Ridley as *Zosimus: New History*, Sydney 1982, p. 66.
32. Ammianus, *Ammianus Marcellinus*, XXV.9.2, trans. Rolfe, vol. II, p. 549.
33. Ammianus, *Ammianus Marcellinus*, XXV.9.4, trans. Rolfe, vol. II, p. 549.
34. Ammianus, *Ammianus Marcellinus*, XXV.9.11, trans. Rolfe, vol. II, p. 553. This same claim is repeated by Eutropius, *Eutropi Breviarium*, X.17, p. 77; Eutropius, *The Breviarium*, p. 69.
35. See also P. Heather, '*Foedera* and *Foederati* in the Fourth Century', in W. Pohl, ed., *Kingdoms of the Empire: The Integration of Barbarians in Late Antiquity*, Leiden 1997, pp. 57–74, at p. 63, who notes that Ammianus' usage of *foedus* and *foederati* are 'entirely in accord with ancient Roman precedent'.
36. On these see Blockley, *Policy*, pp. 57–9, 61; Socrates, *Historia Ecclesiastica*, IX.4, *Socrate de Constantinople Histoire ecclésiastique*, ed. G. C. Hansen, trans. P Périchon and P. Maraval, introduction and notes P. Maraval, Paris 2004–7, talks about a hundred-year peace treaty. It is not clear whether this refers to 408 or to 422 (Blockley, *Policy*, p. 57, n. 37; John Malalas, *Ioanni Malalae Chronographia*, ed. I. Thurn, Berlin 2000, XIV.23, talks about a fifty-year treaty). See Dignas and Winter, *Rome and Persia*, pp. 137–8.
37. G. Greatrex, *Rome and Persia at War: 502–532*, Leeds 1998, pp. 114–18; Dignas and Winter, *Rome and Persia*, pp. 100–4.
38. Marcellinus, *The Chronicle of Marcellinus*, text, trans., and comm. B. Croke, *Byzantina Australiensia* 7 (Australian Association for Byzantine Studies), Sydney 1995, p. 34.
39. Procopius, *History of the Wars*, trans. H. B. Dewing, London 1954–71 vol. I, p. 69.
40. Pseudo-Joshua. *The Chronicle of Pseudo-Joshua the Stylite*, trans. and annot. F. R. Trombley and J. W. Watt, Liverpool 2000, p. 99.
41. These earlier roots of this legal tradition will be referred to on pp. 29–30.
42. Zachariah of Mitylene, *Historia Ecclesiastica Zachariae Rhetori Vulgo Adscripta*, ed. E. W. Brooks, Corpus Scriptorum Christianorum Orientalium, Scriptores Syri 39, Louvain 1921, pp. 33–4; F. J. Hamilton and E. W. Brooks, *The Syriac Chronicle known as that of Zachariah of Mitylene*, London 1899, p. 163.
43. The significance of the formal aspects of such treaties is apparent also in Marcellinus' description of the treaty of 533: 'After the fierce, drawn-out struggle conducted against the Persians with Roman toil, peace (*pax*) was finally reached with the Persians through Rufinus the Patrician and Hermogenes the Master of Offices, both ambassadors being sent by our emperor. By a term of this agreed treaty pledges of good faith (*munera concordiae*) were sent afterwords by each emperor to the other.' See Marcellinus, *Chronicle*, p. 44.
44. See R. C. Blockley, ed. and trans., *The History of Menander the Guardian*, Liverpool 1985, pp. 55–71; the treaty pp. 71–7.
45. Ibid., p. 71.

46. Ibid., p. 77.
47. See Dignas and Winter, *Rome and Persia*, pp. 148–51, citing *Chronicon Paschale 284–628 AD*, trans. L. M. Whitby and M. Whitby, Liverpool 1989, p. 189 n. 491; Nikephoros, *Nicephori Archiepiscopi Constantinopolitani Opuscula historica*, ed. C. de Boor, Leipzig 1880, *Historia Syntomos*, 22b–23b, pp. 19–20; C. Mango, 'Nikephoros, Patriarch of Constantinople: Short History, Text, Translation and Commentary', *Dumbarton Oaks Papers*, 10 (1990), Washington DC, p. 15; Theophanes, *Theophanis Chronographia*, ed. C. de Boor, Leipzig 1883–5, AM 6118, vol. I, p. 327.
48. Blockley, *Policy*, pp. 105–6, notes that their control of southern Mesopotamia had led the Sasanians to adopt the organizational, administrative and legalistic skills prevalent there, including the diplomatic practices.
49. Heather, '*Foedera*', pp. 69, 71. For a recent comprehensive survey and analysis of the Barbarians' role see P. Heather, *Empires and Barbarians: The Fall of Rome and the Birth of Europe*, Oxford 2010.
50. Ammianus, *Ammianus Marcellinus*, XVII.10.3, trans. Rolfe, vol. I, pp. 360–1, XVII.10.9, trans. Rolfe, vol. I, pp. 372–3, XVII.10.7–10, trans. Rolfe, vol. I, pp. 373–5.
51. Ammianus, *Ammianus Marcellinus*, XVII.12.13, trans. Rolfe, vol. I, pp. 376–7.
52. Ammianus, *Ammianus Marcellinus*, XVII.13.21, trans. Rolfe, vol. I, pp. 380–1.
53. Ammianus, *Ammianus Marcellinus*, XVII.12.13, trans. Rolfe, vol. I, pp. 376–7: '*numquam antea pignora foederis exhibere conpulsi*'.
54. Priscus, in R. C. Blockley, *The Classicising Historians of the Later Roman Empire*, vol. II, Liverpool 1983, pp. 224–7.
55. This is in contrast to older views which claimed that *foedus* could not follow *deditio*. The opposite, in fact, is true. Most submissions were conditional rather than unconditional. See Heather, '*Foedera*', pp. 61–2.
56. Only several significant examples will be adduced here, many more cases are mentioned in the sources. See Blockley, *Policy*, pp. 5–96, 129–64; see p. 8 (regarding Constantine's agreement with the Tervingi which lasted into the fourth and fifth centuries); pp. 60–5, 159 regarding the agreements with the Huns in 434/5, 442, 447; see also H. Wolfram, *History of the Goths*, Berlin and Los Angeles 1988, pp. 6, 192, 403, n. 146.
57. Ammianus, *Ammianus Marcellinus*, XX.5.8–10, trans. Rolfe, vol. II, pp. 34–5.
58. Ammianus, *Ammianus Marcellinus*, XXX.3.5–6, trans. Rolfe, vol. III, pp. 316–17.
59. Ammianus, *Ammianus Marcellinus*, XXXI.12.9, trans. Rolfe, vol. III, pp. 468–9; see also P. Heather, *The Goths*, Oxford 1996, p. 137.
60. The main source here is Themistius, *Themistii Orationes quae Supersunt*, ed. H. Schenkl, Leipzig 1965–974, XVI, 211, trans. in P. Heather and D. Moncur, *Politics, Philosphy, and Empire in the Fourth Century: Select Orations of Themistius*, Translated Texts for Historians 36, Liverpool 2001, pp. 280–1. Themistius' oration is highly apologetic, clearly in the face of criticism regarding the autonomy that was granted to them. This criticism is clearly

apparent in Synesius' *de Regno*, 14–15, *Patrologia Graeca*, vol. LXVI, cols. 1088–98, who clearly blames Theodosius for granting them the status of *symmachoi*. see A. H. M. Jones, *The Later Roman Empire 284–602*, Oxford 1964, vol. I, p. 157, and vol. III, p. 29, n. 46, where the sources regarding this treaty are cited.

61. See Blockley, *Policy*, pp. 40–1.
62. Blockley, *Classicising Historians*, p. 226.
63. Priscus, cited in ibid., pp. 230–1.
64. E. Landau-Tasseron, 'Alliances in Islam', in M. Bernards and J. Nawas, eds., *Patronate and Patronage in Early and Classical Islam*, Leiden 2005, pp. 1–49; E. Landau-Tasseron, 'Alliances among the Arabs', *al-Qanṭara*, 26 (2005), pp. 141–74; A. Marsham, *Rituals of Islamic Monarchy: Accession and Succession in the First Muslim Empire*, Edinburgh 2009, pp. 25–6.
65. See Marsham, *Rituals of Islamic Monarchy*, pp. 25–6.
66. Ibid., pp. 27–8; see also *ʿAhd al-Umma*, cited and translated in Lecker, *Constitution*.
67. See especially the treaty made *c.* 550 between ʿAbd al-Muṭṭalib b. Hāshim, grandfather of Muḥammad, and leading figures in Mecca, cited in Marsham, *Rituals of Islamic Monarchy*, pp. 27–8, and additional information there, and in Landau-Tasseron, 'Alliances among the Arabs'.
68. G. W. Bowersock, 'The Greek–Nabatean Bilingual Inscription at Ruwwāfa, Saudi-Arabia', in J. Bingen *et al.*, eds., *Le monde grec, pensée, littérature, documents: Hommages à Claire Préaux*, Brussels 1975, pp. 514–17, cited in Z. Rubin, 'Mavia, Queen of the Saracens', *Cathedra*, 47 (1988), pp. 25–49 (Hebrew), at pp. 42–3.
69. Rubin, 'Mavia', pp. 45–46. Rubin notes, following F. Altheim and R. Stiehl, *Die Araber in der alten Welt*, vol. II, Berlin 1965, pp. 319–20, that it is possible that Imrū al-Qays had been an ally of the Persian Bahrām III, who was overthrown in 293 by his brother Narseh. Following this event he may have chosen to desert, and fled to the Romans, became their ally, and converted to Christianity, as claimed by Abū Jaʿfar Muḥammad b. Jarīr al-Ṭabarī, *Taʾrīkh al-rusul wa-l-mulūk*, ed. M. J. de Goeje *et al.*, Leiden 1879–1901, vol. I.2, p. 834; regarding this issue see also n. 133 in C. E. Bosworth, annot. and trans., *The History of al-Ṭabarī*, vol. V: *The Sāsānids, the Byzantines, the Lakhmids, and Yemen*, Albany 1999, p. 44.
70. Rufinus, *Historia Ecclesiastica*, XI, 6; Theodoretus, *Historia Ecclesiastica*, IV, 23; Socrates, *Historia Ecclesiastica*, IV, 36; Sozomen, *Historia Ecclesiastica*, VI.38. In addition to Rubin, 'Mavia', see also Altheim and Stiehl, *Die Araber*, pp. 328–32; J. S. Trimingham, 'Mawwya the first Christian Arab Queeen', *Theological Review of the Near-East School of Theology*, 1 (1978), pp. 3–10; G. W. Bowersock, 'Mavia, Queen of the Saracens', in W. Eck *et al.*, eds., *Studien zur antiken Sozialgeschichte: Festschrift Friedrich Vittinghoff*, Cologne and Vienna 1980, pp. 477–95; P. Mayerson, 'Mavia, Queen of the Saracens', *Israel Exploration Journal*, 30 (1980), pp. 123–31; I. Shahid, *Byzantium and the Arabs in the Fourth Century*, Washington 1984, pp. 138–43.
71. Sozomen, *Historia Ecclesiastica*, VI.38.1.

72. Blockley, *East Roman Foreign Policy*, pp. 161–2. Z. Rubin translates this passage in Sozomen, *Historia Ecclesiastica*, VI.38.1 as 'broken', supposing that the treaty was still in effect and broken actively by Mavia, but the Romans are not presented as demanding that she uphold the treaty, and in fact sent ambassadors to offer her a new treaty: 'When the war became difficult, it seemed necessary to send an embassy regarding peace (*perī eirēnēs*) to Mavia. It is said that she openly refused the envoys sent to her regarding the treaty (*spondas*), "if a certain Bishop by the name of Moses … is not ordained for her people."' See the French translation in A. J. Festugière and B. Grillet, *Sozomène histoire ecclésiastique, V–VI*, Paris 2005, p. 457: 'Vers ce temps, le roi des Sarrasins étant mort, la trêve avec les Romains fut rompue.'

73. This is also Shahid's opinion: *Fourth Century*, p. 143.

74. Ammianus, *Ammianus Marcellinus*, XXXI.16.4–6, trans. Rolfe, vol. III, pp. 502–3, cited by Rubin, 'Mavia', p. 41.

75. R. A. B. Mynors, *Panegyrici Latini*, Oxford 1964, II.22.3; Pacatus, *Panegyric to the Emperor Theodosius*, trans. C. E. V. Nixon, Liverpool 1987, p. 34, cited by Rubin, 'Mavia'; see also Shahid, *Fourth Century*, pp. 203–4.

76. Z. Rubin, 'Mavia', p. 41.

77. Sozomen, *Historia Ecclesiastica*, VI.38.14–15.

78. Blockley, *Classicising Historians*, pp. 404–7. A similar example of a head of a tribe who converted to Christianity and and received the title of phylarch is Aspebetos; see D. J. Chitty, *The Desert a City: An Introduction to the Study of Egyptian and Palestinian Monasticism under the Christian Empire*, Oxford and New York 1966, pp. 83–4, 88.

79. C. Müller, ed., *Fragmenta Historicorum Graecorum*, Paris 1928, vol. 4, p. 179; see I. Shahid, *Byzantium and the Arabs in the Sixth Century*, vol. I, part 1, Washington 1995, pp. 153–60.

80. Shahid (p. 159) believes that this *hegemonia*, which basically should be translated as praefecture, must have been only an honorary one, although the text does not support this.

81. Compare for example Constantine's treaty with the Goths in 332. See Heather, '*Foedera*', pp. 66–7.

82. Procopius' sayings in *Wars*, 3.11.3–4, 8.5.13–14 regarding the changes in the term *foederati* (see Heather, '*Foedera*', pp. 58–60) seem to refer not to the institution of the treaty or *foedus*, but rather to the imprecise use of the term, which in his days was applied not only to groups with whom a *foedus* was signed, but also often to others who served, it seems, as mercenaries. He in fact seems to protest against this, saying: 'But at the present time there is nothing to prevent anyone from assuming this name, since time will by no means consent to keep names attached to the things to which they were formerly applied, but conditions are ever changing … and men pay little heed to the meaning which they originally attached to a name' (*Wars*, 3.11.3–4). In fact, in the preceding paragraph Procopius recounts how Justinian sends the tyrant of Sardinia a letter with an envoy, promising him an alliance (*symmachia*) (*Wars*, 3.10.32). It should also be noted that this refers specifically to the Latin term *foederati*, which Procopius, although writing in Greek,

adduces in its Latin form ('*kai phoideratoi epiklēthentes. houto gar autous tote Latinōn ekalesan Romaioi*': *Wars*, 3.8.13).

83. See Blockley, ed. and trans., *Menander the Guardian*: for the description of the negotiations see pp. 55–71, the treaty, pp. 71–7. Johnson *et al.*, *Statutes*, nos. 52, 110.

84. Priscus in Blockley, *Classicising Historians*, pp. 224–7.

85. See Malalas, *Chronographia*, p. 270, trans. E. Jeffreys, M. Jeffreys, and R. Scott as *The Chronicle of John Malalas*, Melbourne 1986, p. 143.

86. Malalas, *Chronographia*, chap. 11.3, p. 205, ll. 35–9; trans. Jeffreys *et al.*, pp. 143–4.

87. Pseudo-Dionysius, *Pseudo-Dionysius of Tel-Mahre Chronicle, Part III*, trans. with notes and introduction by W. Witakowski, Liverpool 1996, p. 64: 'At the same time the Persians attacked Antioch and it was conquered, ravaged and burnt … they burned it with fire and destroyed it. They stripped it and removed even the marble slabs, with which the walls were overlaid, and took them away to their country, since they also were building in their country a city like this one and named it Antioch too.'

88. See n. 30.

89. See Zosimus, *Thesaurus*, book 3, paras. 33–4; trans. Ridley, pp. 67–8; Malalas, *Chronographia*, pp. 336–7; trans. Jeffreys *et al.*, p. 183. See C. Mango, 'Nisibis', in A. P. Kazhdan *et al.*, eds., *Oxford Dictionary of Byzantium*, New York 1991, vol. III, p. 1488.

    Such situations were not limited to the eastern part of the empire. A situation in which the cities of Thessaly and Macedonia were thrown back and forth between the Barbarians and the empire and paid a dear price is described in Zosimus, *Thesaurus* book 4, paras. 31–2, trans. Ridley, pp. 84–5.

90. See Pseudo-Joshua, *The Chronicle of Pseudo-Joshua the Stylite*, introduction by Trombley and Watt, pp. xxxvii–li, esp. lxv–xlvii.

91. Pseudo-Joshua, *Incerti auctoris Chronicon ps.-Dionysianum vulgo dictum I*, ed. and trans. J. B. Chabot, Paris 1927 (text), Louvain 1949 (Latin trans.) vol. I, p. 280, trans. Trombley and Watt, pp. 61–3 and notes.

92. Thus for example when the Roman *duces* made ready to march against the Persians in the vicinity of Tella they were hindered by the fact that 'the Roman forces that were with them had dispersed to strip the dead'. Olympius, the *dux*, gave an order to light a beacon and sound the trumpets in order to gather them, but this call aroused the Persians rather than the dispersed Roman fighters. As a result the Roman army was badly defeated. See Pseudo-Joshua, *Chronicon*, p. 277, trans. Trombley and Watt, pp. 56–7.

93. Pseudo-Joshua, *Chronicon*, trans. Trombley and Watt, introduction, pp. xlvi–xlvii.

94. Pseudo-Joshua, *Chronicon*, pp. 275–80; trans. Trombley and Watt, pp. 51–63.

95. Pseudo-Joshua, *Chronicon*, p. 300, trans. Trombley and Watt, pp. 94–5.

96. Pseudo-Joshua, *Chronicon*, p. 307, trans. Trombley and Watt, p. 103.

97. For these attacks see Procopius, *Wars*, vol. I, *passim*; see also Malalas, *Chronographia*.

98. Theophanes, *Chronographia*, vol. II, p. 296, trans. Mango, p. 425; *Chronicon ad Annum Domini 1234 pertinens*, ed. and trans. J. B. Chabot, Louvain 1916–20, vol. I, pp. 224 (text), 176 (trans.).

99. Regarding the date see B. Flusin, *Saint Anastase le Perse et l'histoire de la Palestine au début du viie siècle* (text, French translation, and commentary), Paris 1992, vol. II, *commentaire*, pp. 70–4.

100. Sebeos, *The Armenian history attributed to Sebeos*, trans. with notes R. W. Thomson, historical commentary by James Howard-Johnston, assistance from Tim Greenwood, Liverpool 1999, vol. I, p. 58.

101. *Chron. 1234*, pp. 224 (text), 176 (trans.).

102. 'Histoire Nestorienne (Chronique de Séert)', ed. and trans. Monsignor A. Scher, *Patrologia Orientalis*, 13/4, Turnhout 1973, p. 526.

103. See e.g., n. 175: '*aliquot oppida et castella Persarum in deditionem accepit vel vi expugnavit*'.

104. See e.g. Procopius, *Wars*, *passim*, where there are numerous examples.

105. Regarding this term see pp. 24–5.

106. See Phillipson, *Law and Custom*, vol. II, pp. 239–41; see Onasander, 'On the General', in *Aeneas Tacticus, Asclepiodotus, Onasander, with an English Translation by the Members of the Illinois Greek Club*, Cambridge, MA, and London 1977, chaps. 37–8.

107. Kehne, 'Treaties, Upholding of'.

108. C. T. Lewis and C. Short, *A Latin Dictionary*, Oxford 1879, p. 747, s.v. 1. *fides*, IIB (esp. IIB2).

109. See Phillipson, *Law and Custom*, vol. I, p. 391.

110. E. Badian, 'Deditio', *Brill's New Pauly*. Antiquity volumes, ed. Hubert Cancik and Helmuth Schneider, Leiden 2010 (Brill Online).

111. Some claim that the act of surrender meant actually giving yourself up to Roman trust, an act which had no legal significance but was rather a plea for the mercy of the Romans. See Y. Shahal, 'Deditio per Pactionem', MA thesis, Hebrew University of Jerusalem, 2005 (Hebrew), citing E. Badian, 'Hegemony and Independence, Prolegomena to a Study of the Relations of Rome and the Hellenistic States in the Second Century BC,' in J. Harmatta, ed., *Proceedings of the VII Congress of the International Federation of the Societies of Classical Studies*, Budapest 1984, pp. 397–414; W. Dahlheim, *Struktur und Entwicklung des römischen Völkerrechts im dritten und zweiten jahrhundert v. Chr.*, Munich 1968, pp. 48–52; A. M. Eckstein, 'Glabrio and the Aetolians: A Note on Deditio', *Transactions and Proceedings of the American Philological Association*, 125 (1995), pp. 271–89, esp. p. 276. Others maintain that by accepting the *deditio in fidem* the Romans accepted responsibility for the safety and well-being of the vanquished. See E. S. Gruen, "Greek *Pistis* and Roman *Fides*", *Athenaeum*, 60 (1982), pp. 50–68; A. Watson, *International Law in Archaic Rome*, Baltimore and London 1993, pp. 50–3; D. Nörr, *Aspekte des römischen Völkerrechts die Bronztafel Alcantara*, Munich 1989, p. 136.

112. Shahal, 'Deditio per Pactionem'. I am grateful to Prof. Hannah Cotton for referring me to this work.

113. This term does not appear in classical Greek, but was widely used in the Byzantine period as a Greek adaptation of the Latin *pactum*. See for example John Malalas in the case of the agreement made by Antioch with the Persians: '*kata suntaxin philikēn kai pakta … kata idian proairesin pakta eirēnēs kai hupotagēs stēsantōn*', *Chronographia*, chap. 3.11, p. 205, ll. 36–9; the term appears often in the Egyptian Papyri in Greek in reference to contracts of marriage or business contracts. See the data-base of the Papyri in CD ROM no. 7 of the Packard Humanities Institute, 'Papyri', under '*pakton*', *passim*.
114. Phillipson, *Law and Custom*, vol. I, p. 380.
115. H. G. Liddell and R. Scott, *Greek–English Lexicon*, Oxford 1948, s.v. *homologia*, no. 3.
116. Shahal, 'Deditio per Pactionem', p. 48.
117. Ibid., p. 34 citing Polybius, *Histories* 36.9.15.
118. Shahal, 'Deditio per Pactionem', p. 34, citing Cicero, *Pro.Balbo* 15
119. Shahal, 'Deditio per Pactionem', p. 40, citing Cicero, *Pro.Balbo* 29.
120. Heather, '*Foedera*', p. 61–6.
121. Ibid., p. 65–6.
122. Ibid., p. 71.
123. See n. 86.
124. Malalas, *Chronographia*, ch. 11.3, p. 205, ll. 35–39; trans. Jeffreys *et al.*, pp. 143–4.
125. Eutropius, *Eutropi Breviarium*, book 10, chap. 16, p. 76; Eutropius, *The Breviarium*, p. 69.
126. Ammianus, *Ammianus Marcellinus*, XXIV. 2. 1–2; see also XXIV.1.6–9, where the capture of 'Anātā is described. Although not said in so many words, it is most probably a surrender with agreement: 'But on drawing near the walls he [i.e. Julian] considered that a battle must be accompanied by many dangers, and accordingly, partly in mild terms, partly in harsh and threatening language, he urged the defenders to surrender. They asked for a conference with Ormizda, and were induced by his promises and oaths to expect much from the mercy of the Romans. Finally, driving before them a garlanded ox, they came down in suppliant guise. At once the whole fortress was set on fire; Pusaeus, its commander, later a general in Egypt, was given the rank of tribune. As for the rest, they were treated kindly, and with their families and possessions were sent to Chalcis, a city of Syria.'
127. Ibid., XXIV.2, 18–21; trans. Rolfe, p. 421.
128. Procopius, *Wars*, 2.27.45–46; trans. Dewing, vol. I, p. 515, with my changes.
129. See Liddell and Scott, *Lexicon*, s.v. *homologia*, 3b.
130. Procopius, *Wars*, 2.26.12–22.
131. This represents in fact a more general Persian policy. Thus, for example, when the Persians, who had conquered Amida, agreed to relinquish it to the besieging Byzantines, 'a proposal was discussed among them to the effect that the Persians will hand the city over to the Romans for the sum of 1000 pounds of gold' (see ibid., 1.9.4). The inhabitants of Hierapolis (Membij) agree to pay 2,000 *centenaria* if Khusro would raise the siege (see

ibid., 2.6.24–25), and Megas offered Khusro 10 *centenaria* to withdraw from the territory of the Byzantine empire (ibid., 2.6.25).

132. Ibid., 2.7.34–35, trans. Dewing, p. 323.
133. Ibid., 2.5.13, trans. Dewing, pp. 297, 299.
134. Ibid., 2.5.14–31, trans. Dewing, pp. 299–305.
135. Ibid., 2.5.28–33, trans. Dewing, pp. 303, 305.
136. Sebeos, *Armenian History*, vol. I, p. 63.
137. Regarding the Syriac terminology, see also p. 34.
138. *Chron. 1234*, vol. I, pp. 226 (text), 177–8 (trans.).
139. Ibid., pp. 235, l. 27 (text), 184 (trans.).
140. Pseudo-Joshua, *Chronicon*, pp. 315 (text), 116 (trans.).
141. On this term see the discussion below.
142. Amended here from *īmān*, belief or faith, to *amān*, as in the previous sentence.
143. Eutychius (Saʿīd b. Biṭrīq), *Kitāb al-taʾrīkh*, ed. L. Cheikho, Beirut 1905 part II, pp. 5–6 (my translation).
144. See nn. 117–18.
145. Shahal, 'Deditio per Pactionem', p. 34, citing Polybius, *Histories*, 36.9.15.
146. E. W. Lane, *Arabic–English Lexicon*, Cambridge 1984, p. 101B.
147. J. Schacht, 'Amān', *EI²*, vol. I, pp. 429–30.
148. See also E. Tyan, *Institutions du droit public*, Paris, 1954, vol. I, pp. 60–7, 426.
149. See al-Balādhurī, *Buldān*, p.23; Yaḥyā b. Ādam al-Qurashī, *Kitāb al-kharāj*, ed. T. W. Juynboll, Leiden 1896, para. 89.
150. Abū Yūsuf, *Kitāb al-kharāj*, p. 51 (ʿalā an yaṣūnahum wa-yaḥquna dimāʾahum).
151. Al-Balādhurī, *Buldān*, p. 59.
152. Ibid., p. 65.
153. Abū ʿUbayd al-Qāsim b. Sallām, *Kitāb al-amwāl*, Cairo 1353 H, p. 20, para. 52 (=Abū ʿUbayd al-Qāsim b. Sallām, *Kitāb al-amwāl*, ed. M. ʿImāra, Beirut 1989, p. 92, para. 52).
154. Al-Balādhurī, *Buldān*, p. 60.
155. An exception is found in al-Ṭabarī, *Taʾrīkh*, vol. II.3, p. 1769, when during a raid on Cyprus (125 H) a group of the inhabitants chose the protection of the Muslims – *jiwār al-muslimīn* – and were transferred to al-Shām, while others chose Byzantium and moved there.
156. See al-Balādhurī, *Buldān*, pp. 113, 115, 116, 127, 130, 133, etc.; see the appendix to Qāḍī, 'Madkhal', including many versions of agreements, where the term *amān* is prevalent.
157. In early north-west Semitic inscriptions the word *ʾmn* means 'firmness, steadfastness, faithfulness, probably to indicate a sure covenant'. See J. Hoftijzer and K. Jongeling, *Dictionary of the North-West Semitic Inscriptions*, vol. I, Leiden 1995, p. 72). In a Semitic inscription on a statue of Hadad found in Zinjirili the idiom *ve-aman karat bī* is used, referring to the making of a treaty, using the verb *karat* – to cut, common later both in Hebrew (*karat brit*) and in Greek (*horkia temnein*). The word *amana* (*sic*) for covenant appears in the book of Nehemiah 10:1, 11:23, as well as in the

Covenant of Damascus from Qumran (e.g. Covenant of Damascus 20, l. 12 in M. Broshi, ed., *The Damascus Covenant Reconsidered*, Jerusalem 1992, p. 47: 've-ma'asu be-brit ve-amana asher qiymu be-eretz dameseq ve-hu brit ḥadasha'. See also 4Q455.2). In the Babylonian Talmud the word carries the meaning of 'faith, trust', just like the basic meaning of the Greek *pistis* and the Latin *fides*. Thus, *amana hayū devareinū* means 'our words were based on trust', *shṭar amana* is a 'bill of indebtedness signed in trust', *shamar amana* means 'to deal in good faith', and *amanat ha-midot* means 'honesty in measures' (See M. Jastrow, *Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature*, vol. I, New York 1950, pp. 77b–78a).

158. See C. Brockelmann, *Lexicon Syriacum*, Göttingen 1908, p. 653, s.v. *qeyāmā*, 8a/b.

159. F. Løkkegaard, 'Baḳṭ', *EI²*, vol. I, p. 966.

160. Hinds and Sakkout, 'A Letter', p. 229.

161. Ibid., pp. 220 (text), 227 (trans.), which expressly relates to 'what you owe of the *baqṭ* about which a peace agreement was made with you'; and line 53–4 (pp. 222 (text), 228 (trans.)): 'For he [Salm] mentioned to me that you are liable to the *baqṭ* of outstanding years, which you have not made over.'

162. Taqī al-Dīn Aḥmad ibn 'Alī al-Maqrīzī, *Kitāb al-mawā'iz wa-l-i'tibār bi-dhikr al-khiṭaṭ wa-l-āthār*, Cairo 1270 H, vol. I, p. 199.

163. Balādhurī, *Buldān*, p. 199.

164. Ibid.

165. Ibid., pp. 133, 200. See R. Dozy, *Supplemént aux dictionnaires arabes*, Leiden 1881 (repr. 1991) vol. II, p. 377.

166. See Phillipson, *Law and Custom*, vol. I, p. 391.

167. It should be noted that this chronicle relies on Dionysius of Tell-Maḥrē, a Jacobite patriarch (d. 845), who relied in his turn on earlier sources. On this source see L. I. Conrad, 'Syriac Perspectives on Bilād al-Shām during the Abbasid Period', in M. A. Bakhit and R. Schick, eds., *Bilād al-Shām during the Abbasid Period, 132 AH/750 AD–451 AH/1059 AD: Proceedings of the Fifth International Conference*, vol. I, Amman 1991, pp. 1–44, at pp. 17–40; Hoyland, *Seeing Islam*, pp. 416–19; see also the introduction to his forthcoming *Theophilus of Edessa's Chronicle (590–750s) and the Circulation of Knowledge in Late Antiquity and Early Islam*, Translated Texts for Historians, Liverpool forthcoming (2011).

168. For these expressions see Pseudo-Joshua, *Chronicon*, p. 315 (text); trans. Trombley and Watt, p. 116; *Chron. 1234*, pp. 240, ll. 13–14, 248 l. 10–249 l. 14, 254, ll. 20–21, 255, ll. 8–9, 256–7 (text). See also p. 31.

169. Regarding the term *qyāmā*, see p. 54.

170. See J. Payne-Smith, *A Compendious Syriac Dictionary*, Oxford 1903, p. 230; for examples see *Chron.1234*, vol. I, pp. 248, l. 18, 249, l. 10–11, 256 (text); for early usage see Pseudo-Joshua, *Chronicon*, chap. 7, para. 98.

171. The term *riksu u māmītu* (bond and oath) was common in Mesopotamia and Anatolia from the middle of the second millennium BCE, while in Greek the *horkia pista* is found in Homer, and the expression *horkos kai*

synthēkē appears in Greek treaties. See Weinfeld, 'Covenant Terminology', pp. 190–1.

172. *Chron. 1234*, vol. I, p. 255, ll. 8–9 (text). See also parallel usages on pp. 248, 249.

173. See e.g. the case when Pharos was conquered by the Romans; its people were given their *polis*, their ancestral customs (*tous patrious nomous*), and their land. See A. M. Eckstein, 'Pharos and the Question of Roman Treaties of Alliance in the Greek East in the Third Century BCE', *Classical Philology*, 94 (1999), pp. 395–418, at p. 398. When Antiochus III took over Jerusalem he swore, according to Josephus, to allow them to live according to their ancestral customs – *kata tous patrious nomous*. See Josephus, *Antiquitates Iudaicae*, 12.142.

174. See pp. 23–4.

175. A. Noth, 'Zum Verhältnis von kalifaler Zentralgewalt und Provinzen in umayyadischer Zeit: "Ṣulḥ-ʿAnwa". Traditionen für Ägypten und den Iraq', *Die Welt des Islams*, 14 (1973), pp. 150–62.

176. Qāḍī, '*Madkhal*', pp. 251–67.

177. Al-Ṭabarī, *Taʾrīkh*, vol. I, pp. 2897–900; for translation see R. S. Humphreys, annot. and trans., *The History of al-Ṭabarī*, vol. XV: *The Crisis of the Early Caliphate*, Albany 1985, pp. 102–5.

178. On the usage of this term see M. Lecker, 'Appendix E: The Term *Muwādaʿa*', in Lecker, '*Constitution*', pp. 204–5.

179. See al-Balādhurī, *Buldān*, p. 201; trans. P. K. Ḥitti as *The Origins of the Islamic State*, New York 1916, vol. I, pp. 315–16 (except last sentence).

180. Qurʾān 2.279: '*fa-ʿdhanū bi-ḥarbin*'; see Lane, *Lexicon*, vol. I, p. 42 A, s.v. *adhina*.

181. See pp. 33–4, nn. 151–6.

182. Al-Balādhurī, *Buldān*, p. 86.

183. See Abū ʿUbayd, *Amwāl*, pp. 20–1, para. 52 (=*Amwāl*, ed. ʿImāra, p. 92, para. 52); al-Balādhurī, *Buldān*, p. 79.

184. Al-Balādhurī, *Buldān*, p. 59; the agreement given by the Prophet to the people of Ayla was called *amana* (*sic*!): هذه أمنة من الله ومحمد النبي ورسوله ليحنة بن روبة وأهل أيلة.... See e.g. Ibn ʿAsākir, *Taʾrīkh*, vol. II, p. 41; Abū al-Fidāʾ Ismāʿīl b. ʿUmar b. Kathīr, *al-Sīra al-nabawiyya*, vol. IV, Beirut 1976, p. 30.

185. Al-Balādhurī, *Buldān*, pp. 59–60.

186. Ibid., pp. 65–6.

187. Ibid., p. 60.

188. Ibid., pp. 64–5.

189. Ibn ʿAbd al-Ḥakam, *Futūḥ Miṣr*, p. 85.

190. Ibid., p. 89.

191. Qāḍī, '*Madkhal*', pp. 202, 213.

192. Ibid., p. 217–18.

193. See pp. 18–19.

194. Qāḍī, '*Madkhal*', p. 217. See Abū ʿUbayd, *Amwāl*, p. 146, para. 400 (=*Amwāl*, ed. ʿImāra, p. 235, para. 401).

195. Qāḍī, '*Madkhal*', p. 217; Ṭabarī, *Taʾrīkh*, vol. I, pp. 2593, p. 217; Abū ʿUbayd, *Amwāl*, ed. ʿImāra, pp. 295–6, para. 522 (=*Amwāl*, pp. 207–8,

no. 520). Regarding the Nubian *baqṭ* see pp. 8–9; regarding the term see p. 35.
196. Al–Balādhurī, *Buldān*, pp. 201–2.
197. Ibid., p. 218.
198. Ibn ʿAsākir, *Taʾrīkh*, vol. II, pp. 354–5.
199. Ibid., vol. VI, pp. 19–21.
200. Ibid., vol. LXIV, pp. 125–35.
201. See chap. 2.
202. See Qāḍī, '*Madkhal*', pp. 223–8.
203. Phillipson, *Law and Custom*, vol. I, pp. 385–90.
204. See all three versions of the Ruhā agreement: Qāḍī, '*Madkhal*', p. 251; see also Cohen, 'Pact of ʿUmar', p. 143.
205. Qāḍī, '*Madkhal*', p. 256 (Ṭiflīs). See also p. 259 (Baʿalbakk): '*shahīda Allāhu, wa-kafā bi-Allāhi shahīdan*'.
206. Probably referring to Babylon/Memphis (Manf). See A. D. Beihammer, *Quellenkritische Untersuchungen zu den ägyptischen Kapitulationverträgen der Jahre 640–646*, Vienna 2000, p. 64, n. 156.
207. Ṭabarī, *Taʾrīkh*, vol. I, p. 2588–9; H. A. Juynboll, annot. and trans., *The History of al-Ṭabarī*, vol. XIII: *The Conquest of Iraq, Southwestern Persia, and Egypt*, Albany 1989, p. 171.
208. Maqrīzī, *Khiṭaṭ*, vol. I, p. 200.
209. In the 'Constitution of Medina' the treaty also ends with the statement '*wa-inna Allāh ʿalā atqā mā fī hādhihi al-ṣaḥīfa wa-abarrihi*'; see Ibn Hishām, *Kitāb sīrat rasūl Allāh*, ed. F. Wüstenfeld, Göttingen 1858, vol. I, part 1, pp. 343.
210. They were, however, placed in the temples of the gods. See Johnson *et al.*, *Statutes*, nos. 53, 54.
211. For the treaties see Qāḍī, '*Madkhal*', appendix.
212. There are three versions cited (see ibid., p. 251). Two are typical 'surrender agreements', while al-Balādhurī's version (al-Balādhurī, *Buldān*, p. 207) includes also the demand to repair the bridges and guide those who are lost.
213. See n. 207.
214. For these two latter cases, see Qāḍī, '*Madkhal*', pp. 259–60.
215. Ibid., p. 258, Bihqubādh.
216. Ibid.
217. See note 174; see Eckstein, 'Pharos', pp. 398–9.
218. On this see Donald W. Baronowski, 'The Status of the Greek Cities of Asia Minor after 190 BC', *Hermes*, 119 (1991), pp. 450–63 esp. pp. 461–2, n. 13. On several other occasions the restitution of liberty, land and laws follows defeat by Rome or *deditio*, actual or contemplated: Livy 25.23.4, 29.21.7, 31.31.7, 33.30.2 (Polyb. 18.44.2), 33.32.5 (Polyb. 18.46.5), 37.54.26, 38.44.4, 45.29.4; Polyb. 36.4.4. In each case, the result or the intention of the Roman proclamation was to guarantee a community's independence, subject to some degree of Roman tutelage. On the restitution of freedom by Rome to defeated or surrendered peoples, see Dalheim, *Struktur*, pp. 69–98.
219. Baronowski, 'Status', p. 452, citing Polyb. 21.46.8–10.

220. See W. Dittenberger, *Sylloge Inscriptionum Graecorum* (*SIG*), 3rd edn., vol. II, Leipzig 1915–17, no. 618; trans. in Johnson *et al.*, *Statutes*, no. 23.

221. This is something like the 'autonomy' these cities had under Seleucid rule. See Baronowski, 'Status'.

222. See Johnson *et al.*, *Statutes*, e.g. nos. 19, 20, 25; many others appear in H. Bengston, *Staatsverträge des Altertums*, Kommission für Alte Geschichte und Epigraphik des Deutschen Archäologischen Instituts, Munich 1960–9, as well as in various inscriptions revealed in the Greek world, to be found in Dittenberger, *SIG*.

223. See above, Treaties with the Sasanians; Treaties with the Barbarians and the Arabs.

224. See Polybius, *Histories*; Diodoros Siculus, Dio Cassius, *passim*.

225. See above and nn. 173–4.

226. Blockley, ed. and trans., *Menander the Guardian*, pp. 74–7.

227. This appears in different variations in the *amān* to Miṣr, as it appears in Abū ʿUbayd, al-Ṭabarī, and Yāqūt: see Qāḍī, ʿMadkhal', pp. 256–7; or Tiflīs in Abū ʿUbayd, al-Balādhurī, al-Ṭabarī, and Yāqūt: see ibid.

228. See e.g. in the case of Jurjān, ibid., p. 255; Māh Dīnār, ibid., p. 260; Māh Bahrādhān, ibid., p. 261; Qūmis, ibid., p. 263; Ādharbayjān, ibid., p. 264; Mūqān, ibid., p. 266.

229. Strength or power: see Lane, *Lexicon*, p. 1799, col. 3.

230. Qāḍī, ʿMadkhal', p. 256, Tiflīs.

231. Ibid., Marwarūdh.

232. Ibid., Tiflīs.

233. Ibid., p. 263, Qūmis.

234. Ibid., p. 266, Mūqān.

235. Ibid., pp. 256, 257, 261, 266.

236. Ibid., p. 256, Tiflīs.

237. Ibid., p. 251 (al-Ruhā), p. 260 (al-Ruhā, another version).

238. Ibid., p. 261 (Māh Bahrādhān); the Harāt treaty has: 'wa-iṣlāḥ mā taḥt yadayhi', ibid., p. 265; see also Abū Yūsuf, *Kitāb al-kharāj*, p. 138.

239. See James B. Pritchard, ed., *Ancient Near Eastern Texts Relating to the Old Testament*, trans. and annot. W. F. Albright *et al.*, Princeton 1969 (hereafter *ANET*), pp. 203–5, the treaty between Mursilis the Hittite king and Dupi-Tessub of Amurru; the treaty between Supiluliumas the Hittite and Aziras of Amurru; Sefire III (*c.* 750 BCE), in J. A. Fitzmyer, *The Aramaic Treaties of Sefire*, rev. edn, Rome 1995, pp. 137–41 (=*ANET*, p. 660–1); the vassal treaties of Esarhaddon, *ANET*, pp. 534–41. Despite the existing differences – due, no doubt, to a great extent to the long span of time – the striking similarity found between the Hittite, Assyrian, and Aramaic treaties has been noted and discussed by various scholars. For a survey see Fitzmyer, *Treaties*, pp. 162–6.

240. See Bengston, *Staatsverträge*, vol. III, the treaty between Rhodos and Hierapytna, pp. 314–17, where both *poleis* take upon themselves as mutual obligation to come to each other's aid with all their might in case their *polis*, harbours, or military bases, their routes, or their laws and stable democracy are threatened. They also commit to being well-wishers, friends, and allies always. See ibid. for many additional examples.

241. See for example the treaty between Rome and the Aetolians, Johnson *et al.*, *Statutes*, no. 24; Rome and Antiochus III, ibid., no. 27; Rome and the Jews, ibid., no. 35; treaty with Cnidos in 45 BCE, ibid., no. 110.

242. See e.g. the treaty of 382 with the Goths, p. 17, and the treaty of 434 with the Huns, ibid.

243. See pp. 18–20.

244. The use of terms such as 'vassal' or 'feudal', borrowed from medieval Europe, may of course raise some eyebrows. However, it has been shown by Widengren as justified. On this issue see Rubin, 'Nobility', p. 246, n. 27, who cites and translates Widengren's definition in his *Feudalismus im alten Iran*, Cologne and Oplanden 1967, p. 12, n. 10, according to which feudalism consists in 'the existence of a warrior class that committed itself to military service; the obedience of this warrior class towards the lord as symbolized by a ceremony; and enfeoffment of the individual warriors with the possession of an estate in return for active military service'. See, however, Richard Frye's reservations in his 'Feudalism in Sasanian and Early Islamic Iran', *Jerusalem Studies in Arabic and Islam*, 9 (1987), pp. 13–18, although he notes that 'adequate categories of explanation or new expressions are yet to be found to describe the society or political system of both', p. 18; M. Shaki, 'Class System', *Encyclopedia Iranica*, vol. III, pp. 654–58.

245. G. Widengren, 'Recherches sur le féodalisme iranien', *Orientalia Suecana*, 5 (1956), pp. 79–182, at pp. 89–95.

246. Abu'l-Qasim Firdausī, *Shāh-nāma*, ed. Djalāl Khālighī-Mutlagh, New York and Costa Mesa, 1988–2008, vol. II, p. 62, ll 847–8 (=Firdawsī, *Shāhnāmah*, French trans. J. Mohl, Tehran 1933–6, vol. I, p. 448).

    Line 847: *kunūn khilʿat-i shāh bāyad nukhust yak-ī ʿahd-u muhr-ī bar-ū-bar durust*

    ki tā zinda bāshad bi-Māzandarān parastish kunand-ash hama mihtarān

    One of the MS variants has '*manshūr*' instead of '*muhr*': see vol. II, p. 62, n. 15. (The Russian translation is 'to grant him a royal edict authenticated by a seal'; see Firdousi, *Shāh-nāma*, prepared by T. B. Banu, A. Lahuti, and A. A. Starikov, Moscow 1957, vol. I, p. 407).

    Line 848 – So that as long as he is alive all the nobles in Māzandarān would serve him.

    An addition in one of the MSS (see vol. II, p. 62, n. 17) might clarify the meaning of granting the edict and the seal:

    yak-ī chākir-ī nīk bāshad tu-rā   *firistad hamī bāzh-i andar-kᵛarā*

    He will be a good servant to you [i.e. to Kavus] He will keep sending fitting tribute

247. Firdausī, *Shāh-nāma*, vol. II, pp. 63–4, vv. 860–71 (=Firdawsī, *Shāhnāmah*, vol. I, p. 449).

    Among the description of the gifts granted to Rustam by Kavus:

    p. 63, line 859: *nibishta yak-ī ʿahd-i ū*   *bi-mushk-u may-u ʿūd*
    bar ḥarīr   *dast-i dabīr*

    In the Arabic translation by al-Bundārī (Abū al-Qāsim Firdausī, *Shāh-nāma*, trans. al-Fatḥ b. ʿAlī al-Bundārī, ed. ʿAbd al-Wahāb ʿAzām, Cairo 1350/1932): ومنشور من الحرير بالمسك السحيق, the term *manshūr* refers to letters patent.

248. Firdausī, *Shāh-nāma* vol. IV, pp. 355–8, vv. 2870–915 (=Firdawsī, *Shāhnāmah*, vol. IV, pp. 201–6). See also Ibn al-Balkhī, *Farsnamah*, ed. G. Lestrange and R. A. Nicholson, London 1921, p. 43, who describes how Kay Kāvūs liberated Rustam and gave him a pact (*ʿahd*), awarding him Sistān and Zābulistān.

249. Moses Khorenatsʿi, *History of the Armenians*, book II, chap. 84, trans. R. W. Thomson, Harvard 1980, p. 236: 'Trdat, delighted with the news, wrote an edict that he [Mamgon] was to have authority over all [the lands] that he promised and he made him a prince … with the title Mamgonean after his own name'; *Thomas Artsruni, History of the House of Artsrunik* ed. and trans. R. W. Thomson, Detroit 1985, book I, chap. 7, p. 116.

250. On the dates of Shāpūr's reign see R. Frye, 'The Political History of Iran under the Sasanians', in E. Yarshater, ed., *The Cambridge History of Iran*, vol. III(1): *The Seleucid, Parthian and Sasanian Periods*, Cambridge 1983, p. 119.

251. On the status of the nobility under Sasanian rule see Rubin, 'Nobility', p. 243; for the inscriptions see M. Back, *Die sassanidischen Staatsinschriften*, Tehran and Leiden 1978, pp. 372–8; Huyse, *Kāba-i-Zardušt*.

252. H. Humbach and O. Skjaerv, *The Sasanian Inscription of Paikuli*, Wiesbaden 1978–83.

253. P. Pourshariati, *Decline and Fall of the Sasanian Empire*, London 2007.

254. Sebeos, *Armenian History*, vol. I, p. 5.

255. This refers to Kavādh I (r. 488–531). According to Lazar's history he was appointed by Valarsh, who reigned before Kavādh, 484–8. See ibid., nn. 18, 26.

256. The *sparapet*, or commander-in-chief, of the Mamikonean house. See ibid., vol. I, p. 4, n. 18.

257. Ibid., pp. 6–7; see also Pourshariati, *Decline*, p. 126, citing Sebeos, *Armenian History*, pp. 173, and 133; citing ibid., pp. 43–4, on this sensitive issue of the marzubānate of Armenia.

258. Pourshariati, *Decline*, p. 275.

259. Al-Ṭabarī, *Taʾrīkh*, vol. I, pp. 2665–6; Qāḍī, 'Madkhal', p. 265.

260. Al-Ṭabarī, *Taʾrīkh*, vol. I, p. 2900; Qāḍī, 'Madkhal', p. 265.

261. See Rubin, 'Nobility', p. 246; V. G. Lukonin, 'Political, Social and Administrative Institutions: Taxes and Trade', in E. Yarshater, ed., *The Cambridge History of Iran*, vol. III (2): *The Seleucid, Parthian and Sasanian Periods*, Cambridge 1983, pp. 681–746, at p. 700; see also A. Perikhanian, 'Iranian Society and Law', in Yarshater, ed., *The Cambridge History of Iran*, vol. III(2), pp. 627–80, at p. 632.

262. See Pourshariati, *Decline*, p. 248; al-Ṭabarī, *Taʾrīkh*, vol. I, p. 2658, G. Rex Smith, annot. and trans., *The History of al-Ṭabarī*, vol. XIV: *The Conquest of Iran*, Albany 1994, p. 29.

263. See Pourshariati, *Decline*, pp. 274–5; al-Ṭabarī, *Taʾrīkh*, vol. I, p. 2664; جزيتنا اليكم النصر... فلا تذلونا بالجزية. (G. R. Smith, annot. and trans., *The History of al-Ṭabarī*, vol. XIV: *The Conquest of Iran*, Albany 1994, p. 35: 'Our tribute to you will be the military assistance we render you…but do not humiliate us with tribute.').

264. See Pourshariati, *Decline*, p. 251, citing al-Ṭabarī, *Ta'rīkh*, vol. I, p. 2659, Smith, *Conquest*, p. 30.

265. This is the only source to claim that there was one agreement for the whole territory of al-Shām. Other sources such as al-Balādhurī, al-Ṭabarī, and al-Yaʿqūbī all adduce traditions regarding specific agreements for the various cities of al-Shām, including Jerusalem, Tiberias, Askalon, Ḥimṣ, Damascus, and others. See Hill, *Termination*, pp. 65–75. It thus seems quite conspicuous that this is a later invention intended to generalize the local agreements made. On this version see the following chapter.

266. Abū Yūsuf, *Kitāb al-kharāj*, p. 138.

267. See pp. 8–9.

268. Johnson *et al.*, *Statutes*, no. 3, p. 7.

269. Ibid., no. 27, pp. 25–6.

270. See p. 17.

271. Peter the Patrician, fragments 13–14, trans. in Dignas and Winter, *Rome and Persia*, p. 124.

272. Blockley, ed. and trans., *Menander the Guardian*, pp. 70–3; Dignas and Winter, *Rome and Persia*, p. 141–3.

273. R. H. Charles, trans., *The Chronicle of John (c. 690) Coptic Bishop of Nikiu*, London 1916, chap. 120, paras. 17–21.

274. See e.g. Johnson *et al.*, *Statutes*, nos. 24, 27; regarding the 363 treaty see Ammianus, *Ammianus Marcellinus* (nn. 28–31): 'When this shameful treaty (*decretum*) was concluded, lest anything contrary to the agreements (*pactum*) should be done during the truce, distinguished men were given by both sides as hostages: from our side Nemota, Victor, and Bellovaedius, tribunes of famous corps, and from the opposite party Bineses, one of the distinguished magnates, and three satraps besides of no obscure name'; for the 363 treaty see p. 13; regarding the Goths see p. 17.

275. Charles, trans., *John of Nikiu*, chap. 117, paras. 1–3.

276. On the surrender of Jerusalem and the agreement signed between the Muslims and the inhabitants of the city see al-Ṭabarī, *Ta'rīkh*, vol. I, pp. 2403–6. See also M. Gil, *A History of Palestine 634–1099*, trans. E. Broido, New York 1992, paras. 68–9.

277. Al-Ṭabarī, *Ta'rīkh*, vol. I, p. 2406. De Goeje and Y. Friedmann, who translated this text into English (Y. Friedmann, annot. and trans., *The History of al-Ṭabarī*, vol. XII: *The Battle of al-Qādisiyyah and the Conquest of Syria and Palestine*, Albany 1992, p. 192, n. 711), believe that the expression 'their churches and crosses' makes little sense in this context and considered it to be a mistake. This is also why it was not included in the translation. It is not, however, inconceivable that Jerusalem's exiled inhabitants retained the right to the possessions they had left behind upon leaving the city, until such time as they reached a place of safety.

278. See Muḥammad b. ʿAbdallāh al-Azdī, *Ta'rīkh futūḥ al-shām*, Cairo 1970, p. 140 (E. W. N. Lees, comp., *The Fotooh al-Sham being an Account of the Moslim Conquests in Syria, by Aboo Isma'il Mohammad bin ʿAbd Allah, al-Azdi al-Bacri*, Calcutta 1854, p. 123). In the case of Tiberias, Shuraḥbīl

b. Ḥasana made the usual agreement and 'guaranteed the inhabitants the safety of their lives, possessions, children, churches, and houses', with 'the exception of what they abandoned and left behind them'; see al-Balādhurī, *Buldān*, p. 115.

279. S. D. Goitein, 'Did Omar Prohibit the Stay of the Jews in Jerusalem?', repr. in his *Palestinian Jewry in Early Islamic and Crusader Times in the Light of the Geniza Documents*, ed. J. Hacker, Jerusalem 1980, pp. 36–42, questions the existence of such a treaty, chiefly because Sayf b. ʿUmar is generally considered a highly unreliable source, but also because the supposed treaty included an article prohibiting Jews from living in Jerusalem; this despite the fact that Jews did, in fact, settle in the city shortly after the Muslim conquest.

Gil, however, believes the treaty to be authentic, both because of its phrasing and literary style and because it is quite likely that the treaty contained an article banning the Jews from Jerusalem even if it wasn't enforced later. On Sayf b. ʿUmar's reliability as a source, Landau-Tasseron argues convincingly that Sayf is no more or no less reliable than other narrators: see E. Landau-Tasseron, 'Sayf ibn Umar in Medieval and Modern Scholarship', *Der Islam*, 67 (1990), pp. 1–26.

280. On the authenticity of the Jerusalem agreement see M. Levy-Rubin, 'Were the Jews Prohibited from Settling in Jerusalem following the Arab Conquest?: On the Authenticity of al-Ṭabarī's Jerusalem Surrender Agreement', *Jerusalem Studies in Arabic and Islam*, 36 (2009), pp. 63–81.

281. Balādhurī, *Buldān*, p. 200.

282. I discuss this issue in detail in 'Were the Jews Prohibited'.

283. See pp. 36–7.

284. Al-Ṭabarī, *Taʾrīkh*, vol. I, p. 2898; Humphreys, *Crisis*, p. 103.

285. Al-Balādhurī, *Buldān*, p. 65.

286. See n. 152; n. 186.

287. See nn. 148, 156.

288. On واقه and وقاهية (=واقه and وفهية) see A. de Biberstein Kazimirski, *Dictionnaire Arabe–Française*, Paris 1860, vol. II, p. 1592.

289. Damascus, Miṣr, Ṭiflīs, Jerusalem, Ludd, and Filasṭīn, see Qāḍī, '*Madkhal*', pp. 252, 254, 256, 259, 260.

290. Ibid., p. 256, Ṭiflīs.

291. I agree here with Fattal, who opposes Lammens's theory that this was a parity treaty. See Fattal, *Statut*, pp. 24–6.

292. See p. 9; regarding the term see pp. 34–5.

293. Ibn ʿAbd al-Ḥakam, *Futūḥ miṣr*, pp. 188–9; al-Maqrīzī, *Khiṭaṭ*, vol. III, pp. 290–2; trans. in P. Forand, 'Early Muslim Relations with Nubia', *Der Islam*, 48 (1972), pp. 112–21, at pp. 114–15. For a full list of the translations of this text see Hinds and Sakkout, 'A Letter', p. 210, n. 5.

294. Forand, 'Early Muslim Relations with Nubia', pp. 114–15.

295. Ibid.

296. See ibid., ll. 53–5.

297. Ibid., p. 115.

298. See Hinds and Sakkout, 'A Letter', p. 216.
299. Forand, 'Relations', pp. 113–14; Qāḍī, '*Madkhal*', pp. 209–10; a similar case of supplying slaves as part of the agreement appears in Ammianus, *Ammianus Marcellinus*, 17.13.3, where the surrendering party offers to pay a yearly tribute, as well as 'a levy of their able youth (*dilectumque validate iuventutis*).'
300. See Noth, 'Verträge', pp. 286–90.
301. For examples see pp. 24, 30, 43.
302. Charles, trans., *John of Nikiu*, chap. 120, para. 27.
303. See p. 37. Compare the gifts brought by the bishop of Sura to the Persians, p. 30.

2. *Shurūṭ ʿUmar* and Its Alternatives

1. It should be emphasized, however, that these reports are exceptional and that in most cases only taxes are stipulated. Such stipulations exist in the traditions regarding Tiberias, where al-Balādhurī reports that deserted houses were to be given over to the Muslims (al-Balādhurī, *Buldān*, p. 116), while al-Yaʿqūbī and al-Ṭabarī report that it was stipulated that half the houses in the city were to be given over to the Muslims (al-Yaʿqūbī, *Taʾrīkh*, Leiden 1882, vol. II, p. 159; al-Ṭabarī, *Taʾrīkh*, vol. I, p. 2159). Al-Balādhurī adduces a tradition according to which Ḥimṣ was divided into lots and in each lot one Muslim house was to be built; in addition, Muslims were to settle in all unoccupied houses (al-Balādhurī, *Buldān*, p. 131). On this question see Levy-Rubin, 'Changes'.
2. See Miller, 'Catalogue to Codes', with which I became acquainted only in 2007, thanks to Prof. Mark Cohen.
3. See al-Ṭurṭūshī, *Sirāj al-mulūk*, Cairo 1935, pp. 252–3; for additional editions and English translations see Cohen, 'Pact of ʿUmar', n. 16. See also Fattal, *Le statut*, pp. 60–2 for French translation.
4. Ibn ʿAsākir, *Taʾrīkh*, vol. II, pp. 120, 174–9.
5. Ibn Qayyim al-Jawziyya, *Aḥkām ahl al-dhimma*, ed. Ṣ. al-Ṣāliḥ, Damascus 1961, vol. II, pp. 657–62.
6. Ibid., p. 664.
7. Cohen, 'Pact of ʿUmar', pp. 110–11 and n. 32 there. For the various versions see pp. 137–40, 141–2, 145–6.
8. See Abū Bakr al-Khallāl, *Ahl al-milal*, vol. II, pp. 431–4.
9. See Cohen, 'Pact of ʿUmar', p. 109 and n. 25. Cohen also cites additional later versions. Miller adduces a number of versions in the appendix to 'Catalogue to Codes'.
10. Aḥmad b. Ḥusayn al-Bayhaqī, *Sunan al-Bayhaqī al-kubrā*, Mecca 1994, vol. IX, p. 202.
11. Ibn al-Murajjā, *Faḍāʾil*, pp. 55–6.
12. See Tritton, *The Caliphs*, pp. 10–17; Fattal, *Le statut*, pp. 66–9.
13. Tritton, *The Caliphs*, p. 12; Fattal, *Le statut*, p. 68.
14. Fattal, *Le statut*, p. 68.
15. Ibn ʿAsākir, *Taʾrīkh*, vol. II, pp. 175, 177, 178.

16. Ibn Ḥajar al-ʿAsqalānī, *Lisān al-mizān*, Beirut 1987, vol. III, p. 18; Ibn Abī Ḥātim al-Rāzī, *Kitāb al-jarḥ wa-al-taʿdīl*, Hyderabad 1952, vol. II, part 1, p. 284.

17. H. P. Raddatz, 'Sufyān al-Thawrī', *EI²*, vol. IX, pp. 770–2: F. Sezgin, *Geschichte des arabischen Schrifttums*, Leiden 1967–84, vol. I, pp. 518–19.

18. Abū Zakariya Yaḥyā b. Sharaf b. Marī, *Tahdhīb al-asmāʾ*, Beirut 1996, vol. I, p. 241; Abū al-Maḥāsin Jamāl al-Dīn Yūsuf b. Taghrī Birdī, *al-Nujūm al-zāhira*, Cairo n.d., vol. I, p. 271; Muḥammad b. Aḥmad al-Dhahabī, *al-ʿIbar fi khabar man ghabara*, Kuwait 1960–6, vol. I, p. 139.

19. Ibn al-Murajjā, *Faḍāʾil*, pp. 55–6. Noth already noted the fact that the *isnād* goes back to the middle of the eighth century CE: see Noth, 'Abgrenzungsprobleme', pp. 291 (German), 104 (English), n. 4.

20. Noth, 'Abgrenzungsprobleme', pp. 304–10 (German), 115–21 (English). On the *ghiyār*, see also chap. 5, n. 204.

21. Noth, 'Abgrenzungsprobleme', pp. 302–3 (German), 113–14 (English).

22. See chap. 4. Information on the restrictions of ʿUmar II is abundant. On the dress regulations see Abū Yūsuf, *Kitāb al-kharāj*, pp. 127–8; Abū Bakr ʿAbd al-Razzāq b. Hammām al-Ṣanʿānī, *al-Muṣannaf*, Beirut 1970–2, vol. VI, p. 61. On the prohibition on exhibiting the cross see Abū Yūsuf, *Kitāb al-kharāj*, pp. 138–9; ʿAbd al-Razzāq, *Muṣannaf*, vol. VI, p. 61. For non-Muslim testimonies see Theophanes, *Chronographia*, vol. I, p. 399; Theophanes, *The Chronicle of Theophanes Confessor: Byzantine and Near-Eastern History AD 284–813*, trans. C. Mango and R. Scott, Oxford 1997, p. 550; J. B. Chabot, ed., *Chronique de Michel le Syrien*, Paris 1899–1910, vol. II, p. 489.

23. Fattal, *Le statut*, p. 66.

24. See e.g. Abū ʿUbayd, *Amwāl*, ed. ʿImāra, p. 179, para. 269 (=*Amwāl*, p. 97, para. 269); Abū Yūsuf, *Kitāb al-kharāj*, pp. 138–44 *passim*; al-Shāfiʿī, *Kitāb al-umm*, vol. IV, p. 293; ʿAbd al-Razzāq, *Muṣannaf* vol. VI, p. 61; ʿAbdallāh Muḥammad b. Abī Shayba, *Muṣannaf Ibn Abī Shayba al-Kūfī*, Riyadh 1409 H, vol. VI, p. 467. Especially interesting is a *ḥadīth* adduced by Abū ʿUbayd concerning the meeting between ʿUmar and the people of Adhrʿāt, who received him carrying swords. ʿUmar was appalled, and ordered that they be sent back, but Abū ʿUbayda remarked that it was *sunnat al-ʿajam* (the custom of the non-Arabs) and such an action would be considered a violation of the treaty. ʿUmar accepted this view, and received them. Abū ʿUbayd goes on to explain that although ʿUmar resented this custom he nevertheless accepted it because their customs, prayer-house *et alia* were all part of the treaty which could not be violated (وقع الصلح عليه وليس لاحد نقضه): Abū ʿUbayd, *Amwāl*, ed. ʿImāra, p. 243, para. 426 (=*Amwāl*, p. 152, para. 425).

25. The legal discussions over this term will be discussed below.

26. Abū ʿUbayd, *Amwāl*, ed. ʿImāra, p. 179, para. 269 (=*Amwāl*, p. 97, para. 269):أيّما مصر مصرته العرب فليس لأحد من أهل الذمّة أن يبنوا فيه بيعة، ولا يباع فيه خمر ولا يقتنى فيه خنزير، ولا يضرب فيه بناقوس. وما كان قبل ذلك فحقّ على المسلمين أن يوفوا لهم بذلك

27. ʿAbd al-Razzāq, *Muṣannaf*, vol. X, p. 320 (cf. vol. VI, p. 60):أما ما مصر المسلمون فلا ترفع فيه كنيسة، ولا بيعة، ولا صليب، ولا سنان، ولا ينفخ فيها ببوق، ولا يضرب فيها بناقوس، ولا يدخل فيها خمر ولا خنزير، وما كانت من ارض صولحوا صلحًا، فعلى المسلمين أن يفوا لهم بصلحهم See.

also other versions in Ibn Abī Shayba, *Muṣannaf*, vol. VI, p. 467; al-Bayhaqī, *Sunan*, vol. IX, p. 201–2.

28. ʿAbd al-Razzāq, *Muṣannaf*, vol. X, p. 320; cf. vol. VI, p. 60.

29. See ibid., vol. VI, pp. 59–60, esp. p. 60, no. 10001, vol. X, pp. 319–20. The full term *amṣār al-muslimīn* appears in this discussion at the beginning of the chapter 'The destruction of their churches and should they ring the *nāqūs*?' in vol. X, p. 319. Later he uses just *amṣār*, but the meaning is clear.

30. ʿAbd al-Razzāq, *Muṣannaf*, vol. VI, p. 61, vol. X, p. 320.

31. Abū ʿUbayd, *Amwāl*, ed. ʿImāra, p. 179, para. 269 (=*Amwāl*, p. 97, para. 269).

32. Abū ʿUbayd, *Amwāl*, ed. ʿImāra, pp. 181–3, paras. 277–9 (=*Amwāl*, pp. 99–102, paras. 277–9).

33. Abū ʿUbayd, *Amwāl*, ed. ʿImāra, p. 182, para. 277 (=*Amwāl*, p. 100, para. 277).

34. اذا كان المصر للمسلمين احيوه او فتحوه عنوة, Shāfiʿī, *Kitāb al-umm*, vol. IV, p. 293.

35. Ibid.: فأما بلاد لم يكون لهم ..

36. Abū ʿUbayd explains that 'house of chastisement' refers to churches, synagogues, and fire-temples, which are not to dwell together with mosques in *amṣār al-muslimīn*: لا ينبغي لبيت رحمة ان يكون عند بيت عذاب. قال أبو عبيد أراه يعني الكنائس والبيع وبيوت النيران. يقول لا ينبغي أن تكون مع المساجد في أمصار المسلمين. Abū ʿUbayd, *Amwāl*, ed. ʿImāra, p. 177, para. 263 (=*Amwāl*, p. 95, para. 263).

37. Muḥammad b. al-Ḥassān al-Shaybānī, *al-Siyar*, ed. M. Khāddūrī, Beirut 1975, p. 265; Muḥammad b. al-Ḥassān al-Shaybānī, *The Islamic Law of Nations: Shaybānī's Ṣiyār*, trans. M. Khadduri, Baltimore 1966, p. 278.

38. Muḥammad b. Jarīr al-Ṭabarī, *Kitāb ikhtilāf al-fuqahāʾ*, ed. J. Schacht, Leiden 1933, p. 236, cited in S. Ward, 'A Fragment from an Unknown Work by al-Ṭabarī on the Tradition "Expel the Jews and the Christians from the Arabian Peninsula (and the Lands of Islam)"', *Bulletin of the School of Oriental and African Studies*, 53 (1990), pp. 407–20, at pp. 413–14.

39. Al-Shaybānī, *Siyar*, p. 265.

40. Muḥammd b. Aḥmad al-Sarakhsī, *Sharḥ kitāb al-siyar al-kabīr*, ed. ʿAbd al-ʿAzīz Aḥmad, n.d., n.p., vol. IV, p. 1535 (no. 3016): كل موضع صار مصرا للمسلمين تجمع فيه الجمع وتقام فيه الحدود See also pp. 1531, 1533.

41. Ibid., pp. 1533–4.

42. ʿAbd al-Razzāq, *Muṣannaf*, vol. VI, pp. 59–61, vol. X, pp. 319–20; Abū ʿUbayd, *Amwāl*, ed. ʿImāra, pp. 176–7, para. 262 (=*Amwāl*, p. 95, para. 262).

43. Al-Sarakhsī, *Sharḥ*, p. 1529 (no. 3003).

44. The question of the residence of *dhimmī*s in Muslim *amṣār* is discussed in Friedmann, *Tolerance*, pp. 92–3.

45. For a discussion of this see Ward, 'A Fragment', pp. 409–13.

46. See ibid., pp. 413–14.

47. Al-Sarakhsī, *Sharḥ*, pp. 1536–7 (no. 3020).

48. Ibid., pp. 1537–8 (no. 3023).

49. B. Jokisch, *Islamic Imperial Law*, Berlin and New York 2007, pp. 3–4.

50. Ibid., pp. 31–3, 104–8.

51. See ibid., pp. 3–4, 77–96.

52. Ibid., pp. 3–4.

53. See Cohen, 'Pact of 'Umar', p. 128.
54. See below, and chap. 4.
55. See pp. 63–4.
56. The dating of *Kitāb al-kharāj* and the writings of other early Muslim juris-prudents has been challenged by Norman Calder. In his book *Studies in Early Muslim Jurisprudence*, Oxford 1993, Calder claimed that Abū Yusūf's *Kitāb al-kharāj* as well as al-Shāfiʿī's *Kitāb al-umm* and other texts are, in fact, a prod-uct of Muslim society in the third century. Calder's theory has been rejected by many scholars. See e.g. the opinions of Y. Dutton, 'Review of N. Calder's *Studies in Early Muslim Jurisprudence*', *Journal of Islamic Studies*, 5 (1994), pp. 102–8; H. Motzki, 'The Prophet and the Cat: On Dating Mālik's *Muwaṭṭaʾ* and Legal Traditions', *Jerusalem Studies in Arabic and Islam*, 22 (1998), pp. 18–83 esp. n. 19; and M. Q. Zaman, *Religion and Politics under the Early ʿAbbāsids: The Emergence of the Proto-Sunnī Elite*, Leiden 1997, pp. 91–3.
57. Noth, 'Abgrenzungsprobleme', pp. 313 (German), 122 (English), n. 99, para. 2.
58. Ibid.
59. Abū Yusūf, *Kitāb al-kharāj*, p. 138. The words *bīʿa* and *kanīsa* are not unequivocal, and could both be understood as both synagogue and church. However, *kanīsa* is the most common word for church, and so it is most likely that *bīʿa* would stand here for another kind of prayer-house, most probably a synagogue. This is also the translation in E. Fagnan, *Livre de l'impôt foncier*, Paris 1921, p. 213. See e.g. Abū ʿUbayd, *Amwāl*, ed. ʿImāra, p. 177, para. 263 (=*Amwāl*, p. 95, para. 263) where he ennumerates side by side الكنائس والبيع وبيوت النيران, most probably 'churches, synagogues, and fire-temples'.
60. Here the text is not clear; it may also be understood to mean that the Muslims should fight an enemy who would attack the *dhimmī*s. But see Abū Yusūf, *Kitāb al-kharāj*, p. 143, which will be cited below, where the text expressly says that they would be allowed to keep their fortresses in order to defend themselves.
61. This appears in some of the versions and omitted in others; see Abū Yusūf, *Kitāb al-kharāj*, p. 138, n. 1.
62. On Makḥūl al-Shāmī see Ḥusayn ʿAṭwān, *al-Riwāya al-taʾrīkhiyya fī bilād al-shām fī al-ʿaṣr al-umawī*, Beirut 1986, pp. 103–5, and see also bibliogra-phy there.
63. See p. 59. The display of these banners, which were most probably embroi-dered with icons or saints, may have been considered *shirk*. In addition, it was also seen as an encroachment upon regal privileges, as banners and stan-dards were customarily used by the caliph's army. See chap. 5, nn. 311–12.
64. Abū Yusūf, *Kitāb al-kharāj*, p. 138.
65. Ibn ʿAsākir, *Taʾrīkh*, vol. II, pp. 123–4.
66. Ibid., vol. VIII, pp. 187–93. See also Sezgin, *Geschichte*, vol. I, pp. 293–4.
67. Ibn ʿAsākir's version, after the prohibition on introducing pork into Muslim neighbourhoods, also includes the prohibition on introducing wine, which (perhaps as a result of negligence) was omitted in Abū Yusūf's version.
68. Abū Yusūf, *Kitāb al-kharāj*, p. 143.

69. Ibid.

70. ‏ولا يدلوهم على عورات المسلمين‏: ibid., p. 144.

71. Ibid., p. 146. Al-Nakīb is found between Tabūk and Maʿān on the *ḥajj* route, according to *Marāṣid al-iṭṭilāʿ ʿalā asmāʾ al-amkina waʾl-biqāʿ*, ed. T. G. J. Juynboll, Leiden 1854, vol. III, p. 228, while al-Kawāthil is at the edge of al-Shām: ibid., vol. II, p. 517 (cited by Fagnan, *Impôt foncier*, p. 227).

72. Abū Yūsuf, *Kitāb al-kharāj*, p. 147.

73. Ibid.

74. Ibid.

75. Ibid., p. 139.

76. For Dionysius see A. Palmer *et al.*, *The Seventh Century in the West-Syrian Chronicles*, Liverpool 1993, pp. 156–7; al-Balādhurī, *Buldān*, p. 137.

77. Abū Yūsuf, *Kitāb al-kharāj*, p. 139.

78. Ibid., pp. 139–40.

79. Ibid., p. 141.

80. Ibid.

81. See p. 74, nn. 73–4.

82. ‏اخبرني عمّي وهب بن نافع قال: كتب عمر بن عبد العزيز الى عروة بن محمد ان تهدم الكنائس القديمة‏ See ‏شهدته يهدمه، فأعيدت، فلما قدم رجاء دعا أبي، فشهدت على كتاب عمر بن عبد العزيزفهدمها ثانية.‏ ʿAbd al-Razzāq, *Muṣannaf*, vol. X, p. 320; and cf. ibid., vol. VI, pp. 59–60. See also ibid., vol. X, p. 319, vol. VI. p. 60: ‏من السنة ان تهدم الكنائس التي في الأمصار‏ ‏القديمة والحديثة‏

83. Ibid., vol. VI, p. 61.

84. See Tritton, *The Caliphs*, p. 46, citing Severus b. al-Muqaffaʿ: Y. ʿAbd al-Masīḥ and O. H. E. Burmester, eds., *History of the Patriarchs of the Egyptian Church by Sawīrus ibn al-Muqaffāʿ*, Cairo 1943. pp. 181, 185.

85. Al-Ṭabarī, *Taʾrīkh*, vol. III, p. 712.

86. *Chron. 1234*, vol. II, pp. 16, 11 (text).

87. Ibid., pp. 21–2 (text), 15 (trans.).

88. The conflict over the public display of the cross by the Christians has already been discussed in S. H. Griffith, 'Images, Islam and Christian Icons', in P. Canivet and J. P. Rey-Coquais, eds., *La Syrie de Byzance à l'Islam VIIe–VIIIe siècles: Actes du Colloque international Lyon – Maison de l'Orient Méditerranéen Paris – Institut du Monde Arabe 11–15 Septembre 1990*, Damascus 1992, pp. 121–38.

89. Palmer *et al.*, *Chronicles*, p. 167; Theophanes, *Chronographia*, vol. I, p. 342; Chabot, ed., *Michel le Syrien*, vol. IV, pp. 421 (text), 431 (trans.).

90. Ibid.

91. Presumably the reference here is to crosses drawn upon walls.

92. Palmer *et al.*, *Chronicles*, pp. 169–70.

93. Ibid.

94. Theophanes, *Chronographia*, vol. I, p. 342.

95. Ibn ʿAsākir, *Taʾrīkh*, vol. LXV, p. 156.

96. See chap. 3.

97. See n. 65.

98. See Noth, 'Abgrenzungsprobleme', pp. 122 (German), 313, n. 99, para. 2 (English), which says only that Abū Yūsuf preserved many traditions parallel

to the *Shurūṭ*, yet he obviously was not familiar with its text; he therefore comes to the unnecessary conclusion that the *Shurūṭ* did not yet exist. As said above, Abū Yūsuf might well have chosen to ignore *Shurūṭ ʿUmar*.

99. Only in Ibn ʿAsākir's fifth version (*Taʾrīkh*, vol. II, p. 120) did I find a slightly different version: ‏.ولا نجدد ما خرب من كنائسنا ولا شيئا منها ما كان في خطط المسلمين‎

100. See ibid., p. 174: ‏ولا يقصد الاجتماع فيما كان منها من خطط المسلمين وبين ظهرانيهم‎; pp. 176, 177, 178: ‏ما كان منها من خطط المسلمان‎. ‏ولا نجيء (نجبي/نجني) ما كان منها من خطط المسلمان‎. For parallel versions see Cohen, 'Pact of ʿUmar', pp. 139, 141.

101. See above, p. 71.

102. The prohibition on displaying the cross on top of the churches appears in most of the versions of the *Shurūṭ*: see e.g. Ibn Qayyim al-Jawziyya, *Aḥkām*, p. 659; Ibn ʿAsākir, *Taʾrīkh*, in all five versions (see n. 16); Abū al-Maʿālī al-Musharraf b. al-Murajjā, *Faḍāʾil bayt al-maqdis*, pp. 56–7; Abū Muḥammad ʿAbd Allāh b. Aḥmad b. Zabr, 'Juzʾ fīhī shurūṭal-naṣārā', in Cohen, 'Pact of ʿUmar', pp. 131–57, at pp. 137, 139. It is, however, missing in a few of the versions: see Ibn Qayyim al-Jawziyya, *Aḥkām*, pp. 661–2; al-Ṭurṭūshī's version, *Sirāj* pp. 252–3; two other versions in Ibn Zabr's text, in Cohen, 'Pact of ʿUmar', pp. 141, 146.

103. See e.g. Ibn ʿAsākir, *Taʾrīkh*, vol. II, p. 120; Ibn Qayyim al-Jawziya, *Aḥkām*, p. 659.

104. Regarding this, see chap. 5.

105. Ibn ʿAsākir, *Taʾrīkh*, vol. II, pp. 121, 175, 176, 177.

106. See also al-Shāfiʿī, *Kitāb al-umm*, vol. IV, p. 292, discussed below.

107. Ibid., pp. 281–4. Regarding the dating see n. 53.

108. Fattal, *Le statut*, pp. 77–81; Tritton, *The Caliphs*, pp. 12–16.

109. See Cohen, 'Pact of ʿUmar', pp. 119–20. Cohen assumes the existence of the *Shurūṭ* at the time of al-Shāfiʿī, accepting Tritton's theory, followed by Fattal, that the ʿUmar in question is ʿUmar b. ʿAbd al-ʿAzīz, or alternatively Noth's proposition that the document originated in the days of ʿUmar b. al-Khaṭṭāb: see pp. 101–3.

110. See Muḥyī-l-Dīn Abū Zakariyyāʾ Yaḥyā b. Sharaf b. Murī al-Nawawī, *Sharḥ al-Nawawī ʿalā Ṣaḥīḥ Muslim*, Beirut 1392 H [1972], vol. XV, p. 100; Abū al-Fidāʾ Ismāʿīl b. Kathīr, *al-Sīra al-nabawiyya*, vol. I, Beirut 1976, p. 199; see also English translation in *The Life of the Prophet Muḥammad*, trans. Trevor Le Gassick, Reading 1998, vol. I, p. 142.

111. E.g. in the matter of the application of Muslim law to *dhimmī*s (al-Shāfiʿī, *Kitāb al-umm*, vol. IV, pp. 298–9); the laws concerning the sale of pigs or wine (ibid., pp. 299–300); the prohibition on entering the Ḥijāz, with the exception of a three-day stay for commercial purposes (ibid., pp. 250–3); the *jizya* (ibid., pp. 247, 287–8).

112. See e.g. the question of mixed marriages discussed by ʿAbd al-Razzāq, *Muṣannaf*, vol. VI, p. 78, Shāfiʿī, *Kitāb al-umm*, vol. V, p. 84; the question of a *dhimmī* giving evidence, ʿAbd al-Razzāq, *Muṣannaf*, vol. VI, p. 129; judgment of *dhimmī*s, ibid., vol. X, pp. 321–3; payment of taxes and *jizya*, ibid., vol. X, p. 328, 333; the *diya* of the *dhimmī*, Shāfiʿī, *Kitāb al-umm*, vol. VI, p. 136; the question of *ʿuhūd*, ibid., pp. 191ff.

113. Al-Shāfiʿī, *Kitāb al-umm*, vol. IV, p. 280.
114. Ibid.
115. See e.g. Theophanes, who reports that the tongue of Petrus, Metropolitan of Damascus, was cut out because he 'publicly reproved the impiety of the Arabs'; he goes on to tell about his namesake Petrus of Maioumas, who called Muḥammad a false prophet and the precursor of the Antichrist: Theophanes, *Chronographia*, pp. 416–17; Theophanes, *Chronicle*, p. 577; for the story of George, a monk from Mar Saba, and his friends who defied Islam in Spain and were martyred see M. Levy-Rubin and B. Z. Kedar, 'A Spanish Source on Mid-Ninth Century Mar-Saba', in J. Patrich, ed., *The Sabaite Heritage in the Orthodox Church from the Fifth Century to the Present: Monastic life, Liturgy, Theology, Literature, Art, Archaeology*, Orientalia Lovaniensia Analecta 98, Leuven 2001, pp. 63–72; see there additional information concerning this phenomenon.
116. Al-Shāfiʿī, *Kitāb al-umm*, vol. IV, p. 281.
117. See e.g. Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. II, pp. 659, 661.
118. See chap. 1, nn. 230–65.
119. See also Ibn ʿAsākir's parallel version, *Taʾrīkh*, vol. II, pp. 123–4 (see n. 66).
120. Shāfiʿī, *Kitāb al-umm*, vol. IV, p. 281.
121. ولا يؤووا جاسوسا ولا يكتموا غشا للمسلمين, Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. II, p. 661, ll. 11–12; ولا نؤوي في كنائسنا ولا في منازلنا جاسوسا ولا نكتم غشا للمسلمين, Ibn ʿAsākir, *Taʾrīkh*, vol. II, p. 176, see also similarly pp. 120, 174, 177, 179; Ibn al-Murajjā, *Faḍāʾil*, p. 56.
122. See chap. 1 (nn. 233, 237, 258).
123. Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. II, pp. 659, 651.
124. Al-Shāfiʿī, *Kitāb al-umm*, vol. IV, p. 283.
125. Ibid., p. 281.
126. Ibid., p. 283.
127. Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. II, p. 659, ll. 12–13; Cohen, 'Pact of ʿUmar', p. 141, l. 13.
128. See e.g. Ibn Qayyim al-Jawziyya's second version, *Aḥkām*, vol. II, pp. 661–2.
129. Al-Shāfiʿī, *Kitāb al-umm*, vol. IV, p. 282; trans. in Lewis, *Islam*, p. 221.
130. Al-Shāfiʿī, *Kitāb al-umm*, vol. IV, p. 282; trans. in Lewis, *Islam*, p. 221.
131. Shāfiʿī, *Kitāb al-umm*, vol. IV, pp. 292–3.
132. See p. 66, nn. 35, 36.
133. Abū Yūsuf, *Kitāb al-kharāj*, p. 138: see n. 65.
134. Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. II, p. 659, ll. 3–4, p. 661, l. 10; Ibn ʿAsākir, *Taʾrīkh*, vol. II, pp. 174, 176, 178. The other two versions prohibit the repair of churches only in Muslim neighbourhoods: see pp. 120, 177; Ibn al-Murajjā, *Faḍāʾil*, p. 56.
135. See Abū Yūsuf, *Kitāb al-kharāj*, pp. 127–8.
136. Thus, the absolute prohibition on exhibiting the cross (ولا نظهر صليبا على كنائسنا) is followed by a prohibition to parade it on the streets of the Muslims and in their markets (ولا في شيء من طرق المسلمين واسواقهم), and in the versions of the *Shurūṭ* that mention pigs (many of them prohibit only the sale of wine)

the text reads: 'We will not keep pigs in their neighbourhoods' (والا نجاورهم) (بالخنازير). See Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. II, p. 659; Ibn ʿAsākir, *Taʾrīkh*, vol. II, p. 120.

137. Shāfiʿī, *Kitāb al-umm*, vol. IV, p. 283; trans. in Lewis, *Islam*, p. 222.

138. See e.g. Ibn ʿAsākir, *Taʾrīkh*, vol. II, pp. 175–6: إنكم لما قدمتم علينا سألناكم الأمان لأنفسنا، وذرارينا وأموالنا وأهل ملّتنا، وشرطنا لكم على أنفسنا ان: 'When you came against us we asked you for *amān* for ourselves, our descendants, our property, and the people of our community, and we undertook the following obligation towards you.'

139. Cohen, 'Pact of ʿUmar', pp. 103–30.

140. Ibn ʿAsākir, *Taʾrīkh*, vol. LXVII, p. 235.

141. R. Gottheil, 'An Answer to the Dhimmis', *Journal of the American Oriental Society*, 41 (1921), pp. 383–457, at p. 390.

142. Ibn al-Wāṣiṭī (see n. 141): وعلى ان اخذ الحير القبلي من كنائسهم لمساجد المسلمين; Ibn ʿAsākir, *Taʾrīkh*, vol. LXVII, p. 235, ll. 1–2: وجعل يأخذ الخيز القبلي من الكنيسة لمسجد; المسلمين لانها أنظف وأطهر; see also vol. II, p. 181.

143. See e.g. the discussion concerning the authenticity of this tradition in regard to Damascus in al-Balādhurī, *Buldān*, p. 123, where the occupation of former Christian houses is explained by the fact that they were vacated by their inhabitants who had fled to Byzantium; another case is that of Tiberias, in ibid., p. 116; al-Ṭabarī, *Taʾrīkh*, vol. I, p. 2159; in Ḥimṣ the city was divided into lots, in each of which a Muslim house was built; in addition a quarter of the church of St John was confiscated, as well as the houses evacuated by Christians who had fled. See al-Balādhurī, *Buldān*, p. 130; see also Levy-Rubin, 'Changes'.

144. Ibn ʿAsākir, *Taʾrīkh*, vol. II, p. 180, ll. 4–9, p. 181, ll. 12–16.

145. See chap. 4.

3. The Date and the Ideology of the *Ghiyār* Code

1. For the meaning and origin of the term see chap. 5; see Miller, 'Catalogue to Codes', pp. 165–7.

2. In a separate chapter, rather than as part of the general conquest agreement. See below.

3. On these, see chap. 2.

4. See Abū Yūsuf, *Kitāb al-kharāj*, pp. 127–8.

5. See e.g. G. R. Hawting, *The First Dynasty of Islam*, London, and New York 2000, pp. 15–18, 76–81. For avid support of ʿUmar II as a historical devout and pious Muslim, a vehement critic of the Umayyads, and an adamant follower of the *Rāshidūn* see Hasan Q. Murad, 'Was ʿUmar II "A True Umayyad?"', *Islamic Studies*, 24 (1985), pp. 325–48.

6. See P. M. Cobb, "Umar b. ʿAbd al-ʿAzīz', *EI²*, vol. X, pp. 821–2, at p. 822A; on the prevalence of this topos see A. Borrut, 'Entre tradition et histoire: genèse et diffusion de l'image de ʿUmar II', *Mélanges de l'université Saint-Joseph*, 58 (2005), pp. 329–78, at pp. 329–36.

7. See E. Landau-Tasseron, '"The Cyclical Reform": A Study of the *Mujaddid* Tradition', *Studia Islamica*, 70 (1989), pp. 79–113, at pp. 84, 112–13.

8. Hawting, *Dynasty*, pp. 18, 77: 'While there is no doubt that the acceptance of ʿUmar as a genuine caliph (*khalīfa*), unlike the other Umayyads who count only as kings (*muluk*), is based to some extent on historical facts and on this caliph's personality and actions, it is also clear that much of the traditional writing about him should be regarded as pious and moralistic story-telling in keeping with the needs and outlook of tradition' (p. 77).

9. Fattal, *Le statut*, pp. 97–9.

10. Abū al-Qāsim ʿAbd al-Raḥmān b. ʿAbd al-Ḥakam, *Sīrat ʿUmar b. ʿAbd al-ʿAzīz*, Cairo 1994, p. 160; Abū Yūsuf, *Kitāb al-kharāj*, pp. 127–8; ʿAbd al-Razzāq, *Muṣannaf*, vol. VI, p. 61, no. 10004; Abū ʿUbayd, *Amwāl*, ed. ʿImāra, p. 130, para. 137 (=*Amwāl*, p. 53, para. 137); Ibn ʿAsākir, *Taʾrīkh*, vol. II, pp. 179–80, 185; for a short reference see Chabot, ed., *Michel le Syrien*, vol. II, pp. 488–9.

11. Cohen, 'Pact of ʿUmar', pp. 140, 147.

12. Y. Kalfon-Stillman, *Arab Dress: A Short History from the Dawn of Islam to Modern Times*, ed. N. A. Stillman, Leiden 2000, p. 44.

13. Ibn ʿAsākir and Ibn Zabr, adducing the same *ḥadīth*, have also *qalansuwa* (Ibn Zabr, 'Juzʾ', p. 140; Ibn ʿAsākir, *Taʾrīkh*, vol. II, p. 179), while Abū Yūsuf also includes a prohibition on silk clothes (*Kitāb al-kharāj*, p. 127).

14. Abū Yūsuf, *Kitāb al-kharāj*, p. 127; the same version exactly is also cited by Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. II, p. 743.

15. Ibn ʿAbd al-Ḥakam, *Sīrat ʿUmar*, p. 160.

16. Ibid.

17. Cohen, 'Pact of ʿUmar', p. 140.

18. Ibid., p. 147.

19. Quoting exactly the same *ḥadīth* and *isnād* on pp. 179–80 and another *isnād*, going back to al-Ḥakam b. ʿUmar al-Ruʿaynī, on p. 185, which does not carry the same suffix mentioned here below.

20. Although the term *mafrūq* could also be interpreted as someone whose hair is parted, this is not possible in this case, as it is well established that the demand was to cut the forelocks and not to part them. This is said in so many words in the second part of the edict cited by Abū Yūsuf, complaining that the non-Muslims had abandoned the girdles, had started wearing their hair thick and long, and had abandoned the trimming (of the forelocks): وتركوا المناطق علي اوساطهم واتخذوا الجمام والوفر وتركوا التقصيص (Abū Yūsuf, *Kitāb al-kharāj*, p. 128), and in ʿAbd al-Razzāq's version: وينهوا ان يفارقوا رؤوسهم ويجزّوا نواصيهم – and they should be prohibited from parting their hair and should cut their forelocks (Abd al-Razzāq, *Muṣannaf*, vol. VI, p. 61, no. 10004).

21. Contrary to Abū Yūsuf himself, who states at the beginning of the chapter that the straps of their sandals must be doubled: Abū Yūsuf, *Kitāb al-kharāj*, p. 127 (بان يجعلوا شراك نعالهم مثنية).

22. The first version of Ibn Zabr and Ibn ʿAsākir both omit the *qabāʾ* and the *ṭaylasān* and add the *qalansuwa*.

23. Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. II, pp. 741–2.

24. See pp. 153–7 (nn. 283–308).

25. See n. 64, 65; see also chap. 5, nn. 223–48.

26. Abū Yūsuf, *Kitāb al-kharāj*, p. 127; ʿAbd al-Razzāq, *Muṣannaf*, vol. VI, p. 61, no. 10004.

27. Ibn Zabr, 'Juz'', p. 146; Ibn ʿAsākir, *Taʾrīkh*, vol. II, p. 180: وما رأيت هذه الزيادة فيما وقع الينا من عهود عمر بن الخطاب ووجدتها مروية عن عمر بن عبد العزيز.

28. See Chabot, ed., *Michel le Syrien*, vol. IV, p. 456 (text), vol. II, pp. 488–9 (trans.); *Chron. 1234*, vol. I, pp. 307–8 (text), vol. I, pp. 239–40 (trans.); Bar Hebraeus, *Chronicon Syriacum*, ed. A. Fiat, Paris 1890, p. 117.

29. See Borrut, 'Tradition et histoire', pp. 349–52: Hoyland, trans., *Theophilus*.

30. *Chron. 1234*, vol. I, p. 307 (text).

31. Such as the imposition of the head tax, the prohibition on Christians serving as witnesses, the regulation that the penalty for the murder of a Christian should not be death but rather a compensation fee, and the annulment of the tithes to churches and monasteries. See Chabot, ed., *Michel le Syrien*, vol. IV, p. 456 (text), vol. II, pp. 488–9 (trans.);, *Chron. 1234*, vol. I, pp. 307–8 (text), vol. I, pp. 239–40 (trans.).

32. Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. II, p. 742; Abū al-ʿAbbās Taqī al-Dīn Aḥmad b. ʿAbd al-Ḥalīm b. Taymiyya, *Iqtiḍāʾ al-ṣirāṭ al-mustaqīm li-mukhālafat aṣḥāb al-jaḥīm*, Cairo 1369 H, vol. I, pp. 123–4. Both of the *isnād*s go back to Muḥammad b. Qays, who was ʿUmar b. ʿAbd al-ʿAzīz's *qāṣṣ* (or *qāḍī*): see Ibn ʿAsākir, *Taʾrīkh*, vol. LV, pp. 108–14; and to Saʿīd b. ʿAbd al-Raḥman b. Ḥasan (both seem to carry the same mistake: Ḥabān instead of Ḥasān) b. Thābit the poet, who served as a deputy of Yazīd b. ʿAbd al-Malik and Hishām b. ʿAbd al-Malik. See Ibn ʿAsākir, *Taʾrīkh*, vol. XXI, pp. 177–83. A similar tradition is noted by Fattal, *Le statut*, p. 98 and n. 55, citing al-Ṭurṭūshī, Ibn Naqqāsh, and al-Ibshīhī. Fattal notes that a famous scholar of the twelfth century, al-Kāsānī, retelling the episode of the Banū Taghlib, also claimed that ʿUmar b. ʿAbd al-ʿAzīz was the initiator of the *ghiyār*: see *Le statut*, p. 98, n. 56.

33. For the various versions of this tradition see Shahid, *Fourth Century*, pp. 422–32. A similar story is attributed to al-Mahdī: see Chabot, ed., *Michel le Syrien*, vol. IV, pp. 478–9 (text), vol. III, p. 1 (trans.).

34. Hishām al-Kalbī, an early source (737–819 or 821 CE), reports that the Tanūkhids came out to meet al-Mahdī on horseback, wearing *ʿamāʾim* (turbans) on their heads. When he found out that they were Christian he asked them to convert, but they refused. He then beheaded their chief, after which they converted to Islam. Shahid, *Fourth Century*, p. 431, and n. 61 citing al-Kalbī from a manuscript of Yāqūt's *al-Muqtaḍa*, who epitomizes al-Kalbī's *Jamhara*.

35. See Hoyland, *Seeing Islam*, pp. 352–4, and see there, on p. 352, n. 60, the citation of Khālid from Azdī's *Futūḥ*, saying: 'We do not allow Arabs to be in a religion other than ours'; see also ibid., pp. 415–16, the Ehnesh Inscription, which mentions that the caliph al-Mahdī ordered the Tanūkh to become Muslims. This is indeed sixty years later than ʿUmar II, but may well signify the deterioration in the relationship between Christian and Muslim Arabs.

36. On the issue of the dress code see chap. 5.

37. Ibn ʿAbd al-Ḥakam, *Sīrat ʿUmar*.

38. Ibid., pp. 27–8.
39. Borrut, 'Tradition et histoire', pp. 359–64.
40. H. A. R. Gibb, 'The Fiscal Rescript of ʿUmar II', *Arabica*, 2 (1955), pp. 1–16, at pp. 1–2.
41. Ibn ʿAbd al-Ḥakam, *Sīrat ʿUmar*, p. 87.
42. Ibid., p. 89.
43. Ibid., p. 90.
44. Ibid., pp. 92–5.
45. Ibid., p. 94.
46. Ibid., pp. 161–2.
47. E.g. his correspondence with ʿUmar b. al-Walīd (ibid., pp. 150–3; Ṣafwat, *Jamhara*, vol. II, pp. 369–72 (nos. 418–19); his letter to Sālim b. ʿAbdallāh (Ibn ʿAbd al-Ḥakam, *Sīrat ʿUmar*, p. 125; Ṣafwat, *Jamhara*, vol. II, pp. 375–8); his letter to Abū Bakr b. Muḥammad b. ʿAmru b. Ḥazm (Ibn ʿAbd al-Ḥakam, *Sīrat ʿUmar*, p. 72; Ṣafwat, *Jamhara*, vol. II, pp. 328–39).
48. See M. Cook, *Early Muslim Dogma*, Cambridge 1981, pp. 124–36.
49. Ibid., p. 7.
50. Ibid., p. 165, chap. 2, n.1, and pp. 101–2.
51. See ibid., p. 7; P. Crone and F. Zimmermann, *The Epistle of Sālim b. Dhawkān*, Oxford 2001, p. 16 and p. 148, n. 14.
52. Crone and Zimmermann, *Epistle*, p. 15.
53. Cook, *Dogma*, pp. 16–20.
54. See Q 3:110–12, 3:139, 2:61, 17:111, 42:45, 47:35. On this subject see H. Ben-Shammai, 'The Idea of Election in Early Islam', in S. Almog and M. Heyd, eds., *Chosen People, Elect Nation and Universal Mission*, Jerusalem 1991, pp. 147–77 (Hebrew); Friedmann, *Tolerance*, pp. 34–9, esp. p. 35, and n. 115, citing Muḥammad b. Ismāʿil al-Bukhārī, *Kitāb al-jāmiʿ al-saḥīḥ*, ed. M. L. Krehl and T. W. Juynboll, Leiden 1862–1908, vol. I, ed. L. Krehl, Leiden 1864, pp. 339–40): 'Islam is exalted and nothing is exalted above it' (*al-Islām yaʿlū wa lā yuʿlā*).
55. Ibn ʿAbd al-Ḥakam, *Sīrat ʿUmar*, p. 79: وانّ الله علّمكم منه ما علّمكم واوّلكم يومئذ اقلّ الناس p. 85: وذلك الامر الذي رفعنا ونجن شوكة واوهنه واوهنه قوة واشدّ فرقة واحقره عند من سواهم من الناس محقرة بمنزلة الوضيعة واكرمنا ونجن بمنزلة الهوان واعزّنا ونجن بمنزلة الذلّ.
56. Ibid., p. 82.
57. Trans. in A. J. Arberry, *The Qurʾān Interpreted*, London and New York 1955, vol. II, p. 53.
58. Ibn ʿAbd al-Ḥakam, *Sīrat ʿUmar*, p. 84.
59. وانّ المشركون نجس حين جعلهم الله جند الشيطان, ibid., p. 159.
60. On the use of *mushrikūn* for non-Muslims in general as a polemical term, and reflecting, in fact, the original Qurʾānic tone, see G. R. Hawting, 'Idolatry and Idolators', *Encyclopaedia of the Qurʾān*, Leiden and Boston 2002, pp. 475–84, at pp. 477, 479.
61. See a *ḥadīth* expressing the same message and attributed to ʿUmar in *Shurūṭ al-naṣāra* from the tenth or eleventh century CE, in Cohen, 'Pact of ʿUmar', p. 148: افلا اتخذت كاتبا حنيفا يكتب لك قال يا امير المومنين ما لي وله له دينه ولي كتابه وقال عمرؤ لا This tradition is repeated تامنهم اذ خوّنهم الله ولا تكرمهم اذ اهانهم الله ولا تدناهم اذ اقصاهم الله in later literature; see al-Qurṭubī, *Tafsīr al-Qurṭubī*, Cairo 1372 H, vol. IV,

p. 179; 'Abdallāh b. Aḥmad b. Qudāma al-Maqdisī, *al-Mughnī*, Beirut 1405
H, vol. I, p. 270, vol. VI, p. 326.

62. Ibn 'Abd al-Hakam, *Sīrat 'Umar*, p. 160.

63. See n. 20; M. Bravmann, 'The Ancient Arab Background of the Qurʾānic
Concept *al-Jizyatu 'an Yadin*', *Arabica*, 13 (1966), pp. 307–14.

64. The *qabāʾ* was 'a luxurious sleeved robe slit in front with buttons (*muzar-rar*) made of fabric such as brocade (*dībāj*), and apparently of Persian prov-enance': see Kalfon-Stillman, *Arab Dress*, p. 12, and n. 17; see also Dozy,
Supplemént, pp. 352–62.

65. Here literally 'a belt made of leathers', perhaps meaning that the belt could
be made of various kinds of leather: Ibn 'Asākir, *Taʾrīkh*, vol. II, p. 180 has
zunnār min jild in the singular.

66. See chap. 5 (nn. 165–86, esp. n. 186).

67. See introduction, n. 13.

68. Regarding the epithet *fārūq*, see G. Levi Della Vida, review of vol. V of L.
Caetani's *Annali*, in *Rivista degli studi orientali*, 4 (1911), pp. 1074–6; G.
Levi Della Vida (M. Bonner), "Umar (I) b. al-Khaṭṭāb', *EI²*, vol. X, p. 820;
P. Crone and M. Hinds, *God's Caliph*, Cambridge 1986, pp. 113–14; Crone
and Cook, *Hagarism*, pp. 5–6; W. W. Barthold, 'Caliph 'Umar II and the
Conflicting Reports on his Personality', *Islamic Quarterly*, 15 (1971),
pp. 69–95, at pp. 73–5.

69. See Ṭabarī, *Taʾrīkh*, vol. III, pp. 1392–3; J. L. Kramer, annot and trans.,
The History of al-Ṭabarī, vol. XXXIV: *Incipient Decline*, Albany 1989,
pp. 92–3.

70. See Muḥammad b. Jarīr al-Ṭabarī, *Tafsīr al-Qurʾān*, Beirut 1405H [1984],
vol. IV, p. 51; Ibn Kathīr, *Tafsīr Ibn Kathīr*, Beirut 1401H [1980], vol. II,
p. 350; al-Qurṭubī, *Tafsīr*, vol. I, p. 430; al-Nīsābūrī, *al-Mustadaik 'ala
al-ṣaḥīḥayn*, Beirut 1990, vol. IV, p. 477; Ibn Abī Shayba, *Muṣannaf*, vol. IV,
p. 216, no. 19437.

71. Fattal, *Le statut*, pp. 98–9; Bar Hebraeus, *Chronicon*, p. 117.

72. P. Crone, 'The Pay of Client Soldiers in the Umayyad Period', *Der Islam*, 80
(2003), pp. 284–300; I. Hasson, 'Les *mawālī* dans l'armée musulmane sous
les premiers umayyads', *Jerusalem Studies in Arabic and Islam*, 14 (1991),
pp. 176–213.

73. See chap. 5 (nn. 136–49).

74. H. A. R. Gibb, 'Arab–Byzantine Relations under the Umayyad Caliphate',
Dumbarton Oaks Papers, 12 (1958), pp. 219–33, at p. 233.

75. For the letter, see chap. 5.

76. Al-Shāfiʿī, *Kitāb al-umm*, vol. IV, p. 282; trans. in Lewis, *Islam*, p. 221.

4. The Enforcement of *Shurūṭ 'Umar*

1. Fattal, *Le statut*, p. 103.

2. S. D. Goitein, *A Mediterranean Society: The Jewish Communities of the
Arab World as Portrayed in the Documents of the Cairo Geniza*, vol. II: *The
Community*, Berkeley, 1971, pp. 287–8.

3. Gil, *History*, p. 159.

4. This is also in concert with the opinion of Miller, who also noted the connection between the two, yet presumes that it was al-Mutawakkil's decrees that brought about the rise in popularity of the *Shurūṭ*: see 'Catalogue to Codes', pp. 204–5. I would prefer to say that most probably al-Mutawakkil's restrictions were based on an existing document, and that there is actually no reason to doubt that this document was a version of *Shurūṭ ʿUmar*. Miller himself admits that 'a broad array of *isnād*s for the Standard/Cairo Petition in the preserved texts diverge from Rabīʿ b. Thaʿlab. These *isnād*s demonstrate a groundswell of support for the Petition to ʿUmar among lesser known third century *ḥadīth* transmitters from the Ḥijāz through Irāq' (ibid., p. 204).

5. See Palmer *et al.*, *Chronicles*, pp. 169–70. The conflict over the public display of the cross by Christians is discussed in Griffith, 'Images'.

6. See Dionysius of Tell-Maḥrē in Palmer *et al.*, *Chronicles*, text no. 12, AG 1015, p. 78; see ibid., a reference to Chabot, ed., *Michel le Syrien*, vol. IV, p. 447, ll. 17–20, who reports in the same context about an order to remove all crosses.

7. See n. 25.

8. D. C. Dennett, *Conversion and the Poll Tax in Early Islam*, Cambridge, MA, 1950, pp. 78–84.

9. Abū Yūsuf, *Kitāb al-kharāj*, p. 127; see also ʿAbd al-Razzāq, *Muṣannaf*, vol. VI, p. 61, no. 10004.

10. Chabot, ed., *Michel le Syrien*, vol. II, p. 489; ʿAbd al-Razzāq, *Muṣannaf*, vol. VI, p. 61, no. 10004.

11. Chabot, ed., *Michel le Syrien*, vol. II, p. 489.

12. See chap. 2, nn. 30–8, and nn. 84–5; Fattal, *Le statut*, pp. 185–6; al-Ṭurṭūshī, *Sirāj*, p. 138; al-Ṭabarī, *Taʾrīkh*, vol. II, p. 1371.

13. See ʿAbd al-Razzāq, *Muṣannaf*, vol. VI, pp. 19–20; and cf. vol. X, pp. 319–20.

14. Tritton, *The Caliphs*, pp. 42–3.

15. See ibid., p. 102 adducing evidence in favour, and Michael the Syrian (vol. II, p. 489), who claims that ʿUmar forbade tithes and bequests to churches.

16. See Ibn ʿAsākir, *Taʾrīkh*, vol. XXXIV, pp. 236–59; Jamāl al-Dīn Abū-l-Ḥajāj Yūsuf al-Mizzī, *Tahdhīb al-kamāl fī asmāʾ al-rijāl*, Beirut 1992, vol. XVII, pp. 12–18.

17. Abū Yūsuf, *Kitāb al-kharāj*, pp. 127–8.

18. The usual term is *zunnār*, the term used indeed by Abū Yūsuf himself in the previous paragraph describing the prohibitions of his day. The use of the term *minṭaqa*, which was later kept for military and honorary belts, may point to an early date for this tradition, before a clear distinction was made between these two terms. See chap. 5.

19. See ibid., pp. 127–8.

20. Theophanes, *Chronographia*, p. 431; Theophanes, *Chronicle*, p. 596.

21. Theophanes, *Chronographia*, p. 439; Theophanes, *Chronicle*, p. 607.

22. Theophanes, *Chronographia*, p. 446; Theophanes, *Chronicle*, p. 616; see also *Chron. Zuqnin* (*Incerti Auctoris chronicon anonymum pseudo-Dionysianum vulgo dictum*), vol. II, ed. J. B. Chabot, Louvain 1933, pp. 104–105; trans. R. Hespel as *Chron. Zuqnin* (*Incerti Auctoris chronicon anonymum pseudo-Dionysianum vulgo dictum*), Louvain 1989, pp. 123–4.

23. Theophanes, *Chronographia*, p. 430; Theophanes, *Chronicle*, p. 595.
24. See n. 5.
25. See al-Balādhurī, *Buldān*, p. 193; al-Jahshiyārī, *Kitāb al-wuzarāʾ wa-al-kuttāb*, Cairo 1938, pp. 38–40; both these sources make a clear connection between the ousting of prominent non-Muslims from the administration and its Arabization, although of course practically this goal was much harder to achieve; see A. A. Duri, 'Diwān', *EI²*, vol. II, p. 324; Hawting, *Dynasty*, pp. 63–5. There are, however, many traditions relating how ʿUmar b. al-Khaṭṭāb adamantly prohibited the employment of non-Muslims in government offices; even if this were indeed true, it was definitely unfeasible at the time: for a survey on this issue see Fattal, *Le statut*, pp. 240–63.
26. See above.
27. Theophanes, *Chronographia*, p. 430; Theophanes, *Chronicle*, p. 594. The name is miswritten in the text as Salim. See A. Grohmann (and H. Kennedy), 'Ṣāliḥ b. ʿAlī', *EI²*, vol. VIII, p. 985.
28. Al-Ṭabarī, *Taʾrīkh*, vol. III, p. 712.
29. See ibid.; Abū Zakariyāʾ Yazīd b. Muḥammad al-Azdī, *Taʾrīkh al-Mawṣil*, ed. A. Ḥabība, Cairo 1967 p. 311; Tritton, *The Caliphs*, pp. 117–18; Fattal, *Le statut*, pp. 100–1.
30. See M. Levy-Rubin, *Continuatio of the Samaritan Chronicle of Abū ʾl-Fatḥ al-Sāmirī al-Danafī*, text and trans., Studies in Late Antiquity and Early Islam, Princeton 2002, p. 90.
31. For the full description and a citation of the edict itself see al-Ṭabarī, *Taʾrīkh*, vol. III, pp. 1389–94; Kramer, *Decline*, pp. 89–94.
32. ʿAbd al-Raḥmān b. ʿAlī b. Muḥammad b. al-Jawzī, *al-Muntaẓam fī taʾrīkh al-mulūk wa-al-umam*, vol. XIII, Beirut and London 1992, p. 82; Abū al-Maḥāsin Jamāl al-Dīn Yūsuf b. Taghrī Birdi, *al-Nujūm al-ẓāhira fī mulūk miṣr wa-al-qāhira*, ed. Gautier H. A. Juynboll, Leiden 1861, pp. 174–5; Ibn Naqqāsh, 'Fetoua sur la condition des *dhimmīs*', ed. and trans. M. Belin, *Journal Asiatique*, series 4, 18 (1851), pp. 417–516, 19 (1852), pp. 97–140., at 18 (1851), p. 455 reports that al-Muqtadir forbade the employment of *dhimmī*s in the government, gave an order to dismiss all *dhimmī*s already employed, and went as far as executing one such *dhimmī* employed by the *ḥājib* Yūnis; Fattal, *Le statut*, p. 103, reports that Muḥammad al-Ikhshīd enforced a similar set of rules, but does not cite the actual source.
33. Aḥmad b. ʿAlī al-Maqrīzī, *Ittiʿāz al-ḥunafāʾ bi-akhbār al-ʾumūr al-fāṭimiyīn al-khulafāʾ*, Cairo 1967, vol. I, p. 132; Tritton, *The Caliphs*, pp. 54, 120, 130, and *passim*.
34. On the restrictions of al-Ḥākim see Y. Lev, 'Persecutions and Conversion to Islam in Eleventh Century Egypt', *Asian and African Studies*, 22 (1988), pp. 73–91, at pp. 80–83.
35. Al-Ṭabarī, *Taʾrīkh*, vol. III, p. 1389; Kramer, *Decline*, pp. 89–90.
36. Al-Ṭabarī, *Taʾrīkh*, vol. III, pp. 1392, Kramer, *Decline*, p. 93.
37. Al-Ṭabarī, *Taʾrīkh*, vol. III, p. 1419; Kramer, *Decline*, p. 128.
38. Ibn al-Jawzī, *al-Muntaẓam fī taʾrīkh al-muluk wa-al-umam*, vol. XI, Beirut and London 1992, pp. 222–3. I would like to thank Prof. Y. Lev for kindly sharing with me these references to Ibn al-Jawzī's *Muntaẓam*.

39. Ibid., p. 238.
40. Ibid., p. 265.
41. Ibid., p. 270.
42. Severus b. al-Muqaffaʿ, *History*, vol. II, part 1, p. 6.
43. Bar Hebraeus, *The Chronography of Abūʾl Faraj known as Bar-Hebraeus*, trans. E. A. W. Budge, Oxford 1932, vol. I, p. 141.
44. Levy-Rubin, *Continuatio*.
45. Ibid., pp. 91–3.
46. Al-Mutawakkil's decrees are described in detail in al-Ṭabarī, *Taʾrīkh*, vol. III, pp. 1389–94. See also translation, notes and bibliography in Kramer, *Decline*, pp. 89–94.
47. See N. Rabbat, 'Ṭirāz', *EI²*, vol. X, pp. 534–538.
48. Undoubtedly during grand occasions and ceremonies, when these were reserved for those of honourable rank. For this sense of *martaba* see J. Sadan, *Le mobilier au proche-orient medieval*, Leiden 1976, pp. 54–5.
49. See al-Ṭabarī, *Taʾrīkh*, vol. III, p. 1389.
50. Cf. ibid., p. 1390: 'In addition, he ordered that their graves be made level with the ground so as not to resemble the graves of the Muslims' (Kramer, *Decline*, p. 91).
51. The change in font signifies words written in Samaritan script.
52. See al-Ṭabarī, *Taʾrīkh*, vol. III, p. 1390, who calls these idols *ṣuwar shayāṭīn* (images of devils). The reason given for this is cited by Strauss (Ashtor), 'Social Isolation', p. 80: 'If the houses of the *Dhimmīs* will not bear distinctive signs the beggars approaching them will beg Allāh's mercy upon them and his forgiveness for their sins, and this – say the theologians – is absolutely forbidden.' This was surely a restriction that was meant to be derogatory, since both *shayṭān* and *wathan* are definitely negative terms.
53. A Samaritan settlement near Ramla. It is miscopied here; later on, the correct name appears: see Levy-Rubin, *Continuatio*, Arabic text, p. 166 (MS p. 248); see also the Geographical Appendix.
54. This word, written here quite distinctly in Samaritan script, is transcribed in Arabic as *fanīqa*. I could not find any meaning for it in Arabic or in other Semitic languages.
55. The word used here is *goy* – in Hebrew – literally a man belonging to a different faith, a non-Jewish person.
56. Al-Ṭabarī, *Taʾrīkh*, vol. III, p. 1419.
57. See Ibn ʿAsākir, *Taʾrīkh*, vol. II, pp. 175, 176, 177, 179; Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. II, pp. 659, 661–2; *Shurūṭ al-naṣārā* in Cohen, 'Pact of ʿUmar', pp. 137–8, 139, 142, 146.
58. Al-Ṭabarī, *Taʾrīkh*, vol. III, p. 1393; Cohen, 'Pact of ʿUmar', p. 151.
59. Al-Ṭabarī, *Taʾrīkh*, vol. III, p. 1393; Kramer, *Decline*, pp. 93–4.
60. Abū Yūsuf, *Kitāb al-kharāj*, p. 96.
61. See end of n. 32.
62. ʿArīb b. Saʿd al-Qurṭubī, *Ṣilat taʾrīkh al-Ṭabarī*, ed. M. J. de Goeje, Leiden 1965, p. 30.
63. Ibid.

64. See Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. I, pp. 212–42; for Ibn al-Naqqāsh see 'Fetoua', esp. 18 (1851), pp. 440–55, 19 (1852), pp. 97–140.

65. See Levy-Rubin, *Continuatio*, pp. 103–4; Arabic text, p. 169 (MS p. 251).

66. The word used here is *nabīdh*; this is an alcoholic drink usually made of raisins or dates. It could, however, also mean 'wine expressed from grapes' (Lane, *Lexicon*, p. 2757, s.v. *nabīdh*).

67. Chabot, ed., *Michel le Syrien*, vol. II, p. 489; *Chron. 1234*, vol. I, pp. 307–8 (text), 239 (trans.); Agapius b. Maḥbūb, *Kitāb al-ʿunwān*, ed. and trans. Alexandre Vasiliev, *Patrologia Orientalis* 8/3, Turnhout 1971, pp. 502–3.

68. Theophanes, *Chronographia*, p. 399; Theophanes, *Chronicle*, p. 550.

69. Shāfiʿī, *Kitāb al-umm*, vol. IV, pp. 281, 283.

70. See e.g. Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. II, pp. 659, 661–2.

71. See M. Levy-Rubin, 'Ibn Ṭūlūn and his Attitude towards the Protected People According to a Contemporary Samaritan Chronicle', in Y. Ben Aryeh *et al.*, eds., *Chapters in the History of Eretz Israel and its Settlement: Researches Offered to Y. Ben Porat*, Jerusalem 2003, pp. 345–60 (Hebrew); E. K. Corbet, 'The Life and Works of Aḥmad ibn Ṭūlūn', *Journal of the Royal Asiatic Society* (1891), pp. 527–562; S. Lane-Poole, *A History of Egypt in the Middle Ages*, London 1914, pp. 70–1; Z. M. Hassan, 'Aḥmad ibn Ṭūlūn', *EI²*, vol. I, pp. 278–279; H. Kennedy, *The Prophet and the Age of the Caliphates: The Islamic Near-East from the Sixth to the Eleventh Century*, London 1986, pp. 310–13; J. L. Bachrach, 'Palestine in the Policies of Tulunid and Ikhshidid Governors of Egypt, AH 254–358/868–969', in A. Cohen and G. Baer, eds., *Egypt and Palestine: A Millennium of Association 868–1948*, Jerusalem 1984, pp. 51–65; B. Lewis, 'Egypt and Syria', in *The Cambridge History of Islam*, vol. I: P. M. Holt *et al.*, eds., *The Central Islamic Lands*, Cambridge 1970, pp. 175–230.

72. This is well exemplified in Goitein's statement that 'in Egypt too, we find between 1130 and the end of the Fatimid rule in 1171 occasional attempts to renew the restrictions about the clothing of the non-Muslims. These attempts, however, recorded by the Arabic historians, were ephemeral, and are not echoed in the Geniza papers': Goitein, *Mediterranean Society*, vol. II, p. 288.

73. Levy-Rubin, *Continuatio*, pp. 102–6, Arabic text, pp. 169–71 (MS pp. 251–3).

74. See n. 33.

75. Fattal, *Le statut*, p. 104.

76. Regarding the enforcement of *ghiyār* regulations under his rule, see A. Scheiber, 'A New Fragment of the Life of Obadjah, the Norman Proselyte', *Kirjath Sepher*, 30 (1954–5), pp. 93–8; ʿIzz al-Dīn ʿAlī b. Muḥammad b. al-Athīr, *al-Kāmil fī al-taʾrīkh*, Beirut 1965, p. 186.

77. Goitein, *Mediterranean Society*, vol. II, p. 287; Fattal, *Le statut*, p. 104.

78. Tritton, *The Caliphs*, pp. 115–26; Fattal, *Le statut*, pp. 96–110.

79. See Elias of Nisibis, *Eliae Metropolitae Nisibeni*, ed. E. W. Brooks, Louvain 1954, vol. I, p. 188 (text). Elias attributes this information to al-Ṭabarī, who does indeed mention the riot and the looting and destruction that followed

it, but does not mention the cause of it all, according to Elias – i.e. riding on horses. See al-Ṭabarī, *Taʾrīkh*, vol. III, pp. 2107–8. Al-Ṭabarī does take the trouble to mention that the government troops fought againt the mob and that several days after the riot everything the mob had destroyed was rebuilt.

80. Shams al-Dīn Abū ʿAbdallāh al-Muqaddasī, *Aḥsan al-taqāsīm fī maʿrifat al-aqālīm*, ed. M. J. de Goeje, Leiden 1906 p. 429; trans. B. A. Collins as *The Best Divisions for Knowledge of the Regions: A Translation of Aḥsan al-taqasim fi maʿrifat al-aqalim*, Reading 1994, p. 380.

81. E.g. the restrictions of 1121 in Goitein, *Mediterranean Society*, vol. II, p. 287; Scheiber, 'Obadjah, the Proselyte', p. 98.

82. Fattal, *Le statut*, p. 103.

83. Ibid.

84. See above and n. 72 there.

85. See Tritton, *The Caliphs*, and Fattal, *Le statut*, *passim*.

86. On al-Ḥākim see above, p. 104, n. 34 there; regarding Salāḥ al-Dīn see Severus b. al-Muqaffāʿ, *History*, vol. III part 2, pp. 97–8, trans. p. 164–6.

87. Regarding Spain see Fattal, *Le statut*, p. 105, and further references there.

5. The Provenance of the Modes of Subordination of Non-Muslims

1. Regarding exceptional cases where additional stipulations were made see chap. 2.

2. See previous chapter.

3. Noth, 'Abgrenzungsprobleme', trans. Muelhaeusler, p. 103 (English) where he says: 'The latter group [i.e. the Orientalists: MLR] have interpreted the *Shurūṭ* as a testimony to increasing discrimination experienced by religious minorities within the Islamic world – an interpretation that appears to be confirmed by Islamic interpretations and the history of the implementation of these ordinances.'

4. On this see below, The Concept of *Ghiyār*.

5. Although not a minority, there is no doubt that non-Muslims in the early Islamic empire did not belong to the ruling classes and may therefore be considered closest in their social status to that of minorities.

6. R. Westbrook, ed., *A History of Ancient Near Eastern Law*, Leiden and Boston 2003, pp. 37–42, 377.

7. Although manumitted slaves in Rome were awarded citizenship, they were denied certain rights such as access to public office and to the legions. Their voting rights were also limited. See J. Heinrichs, 'Freedmen (Rome)', in Cancik and Schneider, eds., *Brill's New Pauly*.

8. W. Heffening, *Das islamische Fremdenrecht bis zu den islamische–frän-kischen Staatsverträgen*, Hanover 1925, repr. Osnabrück 1975, pp. 88–91; Tyan, *Institutions*, p. 426.

9. These last two terms are sometimes used interchangeably, although *mawlā* in Islam is usually applied to non-Arab clients who attached themselves to Arabs upon their conversion to Islam, and is often considered a lower status than the *ḥalīf*, who is an ally. Landau-Tasseron, 'Alliances in Islam', pp. 24–5.

10. Westbrook, *History*, p. 38; see there the case of Abraham, in Gen. 23, who upon the purchase of the Cave of the Machpelah in order to bury Sarah, was required to receive special permission from the local Hittite leaders; another case is that of the king of Ugarit who gave a special grant of land to an Egyptian.

11. Ibid.

12. Ibid., p. 42.

13. See Cancik and Schneider, eds., *Brill's New Pauly*, vol. VIII, Leiden and Boston 2002, cols. 810–14.

14. Phillipson, *Law and Custom*, vol. I, pp. 165–76; Cancik and Schneider, eds., *Brill's New Pauly*, vol. VIII, cols. 810–14; see M. Clerc, *Les métèques athéniens: étude sur la condition légale, la situation morale et le rôle social et économique des étrangers domiciliés à Athènes*, Paris1893; repr. 1979; D. Whitehead, *The Ideology of the Athenian Metic*, Cambridge 1977; P. Gautier, 'Métèques, périèques et paroiki: bilans et points d'interrogations', in R. Lonis, ed., *L'étranger dans le monde grec: Actes du colloque organisé par l'Institut d'Études Anciennes Nancy, Mai 1987*, Nancy 1988, pp. 23–46; M. I. Finley, 'Between Slavery and Freedom', *Comparative Studies in Society and History*, 6 (1964), pp. 233–49.

15. See Phillipson, *Law and Custom*, pp. 177, 210–34; B. Nicholas, 'Ius Gentium', p. 790 and T. C. Brennan, 'Praetor', p. 1240, in N. G. L. Hammond and H. H. Scullard, eds., *Oxford Classical Dictionary*, 3rd edn, Oxford 1996.

16. Westbrook, *History*, p. 38.

17. See Phillipson, *Law and Custom*, pp. 193–209; R. S. Bagnall and P. Derow, *Greek Historical Documents: The Hellenistic Period*, Ann Arbor 1981, p. 84.

18. See chap. 1, e.g. the case when Pharos was conquered by the Romans: the people of Pharos were given their *polis*, their ancestral customs (*patrioi nomoi*), and their land. See Eckstein, 'Pharos', p. 398.

19. Josephus mentions that the Jews in Egypt lived according to their own ancestral customs in Egypt, and had their own Ethnarch, who had complete authority over the community: M. Stern, *Greek and Latin Authors on Jews and Judaism*, Jerusalem 1974, vol. I: *From Herodotus to Plutarch*, p. 278, clauses 116–17. When Antiochus III took over Jerusalem he undertook, according to Josephus, to allow the Jews to live according to their ancestral customs – *kata tous patrious nomous*. See Josephus, *Antiq. Iud.*, 12.142.

20. See A. Linder, *The Jews in Roman Imperial Legislation*, Detroit and Jerusalem 1987, pp. 64–5.

21. Ibid., pp. 67–9.

22. See ibid., p. 76, for example, who notes that 'the political capacity of the Jews in the municipal sphere evolved in three stages: collective exemption in the early fourth century; equalization of their status to that of the rest of the population in the fourth and fifth centuries; and legal discrimination from the beginning of the sixth century'.

23. The existence of this formal status awarded to the Jews is debated among scholars. See T. Rajak, 'Was There a Roman Charter for the Jews?', *Journal of Roman Studies*, 74 (1984), pp. 107–23; L. V. Rutgers, 'Roman Policy

towards the Jews: Expulsions from the City of Rome during the First Century CE,' *Classical Antiquity*, 13 (1994), pp. 56–74.

24. Linder, *Jews*, p. 178.
25. Ibid., p. 86, no. 18, pp. 178–82.
26. The law as conveyed by Ulpian 5, 3–5 says: 'Conubium est uxoris iure ducendae facultas. Conubium habent cives Romani cum civibus Romanis: cum Latinis autem et peregrinis ita, si concessum sit. Cum servis nullum est conubium' (*Conubium* is the legal ability to marry a woman. Roman citizens have the *conubium* to marry each other but, only by special dispensation, to marry Latins and other foreigners. There is no *conubium* with slaves); see G. Schiemann, 'Conubium', in Cancik and Schneider, eds., *Brill's New Pauly*, Antiquity vols.
27. Valentian I (r. 364–75 CE) issued an edict prohibiting marriages between inhabitants of the provinces and pagan 'barbarians'. This is an application of the classical *conubium* law rather than a religion-based law.
28. Linder, *Jews*, pp. 269, 297, 400–1.
29. Ibid., p. 288.
30. Ibid., pp. 327 (text), 330 (trans.).
31. Ibid., pp. 84–5.
32. Ibid., p. 77.
33. Ibid., pp. 269, 325, 327, 330, 332, 333.
34. Ibid., pp. 124–7, 138–42.
35. A law promulgated by Justinian in July 527 CE regarding heretics, Jews, and Samaritans states the following:

    We order, therefore, that none of the above-mentioned shall share in any honour whatsoever, nor shall he put on an official belt (*zonē*), neither civil nor military, nor belong to any office … Indeed we order that those who are heretics, and above all pagans, Jews, Samaritans … if they take part in any of all those we have already recalled having obtained an honour, inscribed in the advocates' list, taken an office or put on an official belt, they shall be thrown out on the spot from participating in these. For we want all the above mentioned to be purged from association with such as these now and for ever, not only in this glorious city, but in practically every province and every place. There is absolutely nothing new in this, for at least the Divine belt-documents given for most of the offices contain the specification that the recipient should be Orthodox. Unless this shall be seen to be ours, which we have restored and did not neglect as it was before, when it was unheeded by some and barely survived save in documents alone.

    See Linder, *Jews*, pp. 75–6. Regarding the official belts, see pp. 153–6.
36. Linder, *Jews*, pp. 66, 78, 371–5, 393–8.
37. Ibid., pp. 313–19, 368–9.
38. Fattal, *Le statut*, pp. 138–9; Justinian, Nov. 115: see *Iustiniani Novellae*, ed. Z. A. Lingenthal, Leipzig 1881, part II, no. CXXXVI, chap. 3, para. 14.
39. Linder, *Jews*, pp. 237, 284–5.
40. Ibid., pp. 196–7.
41. See ibid., pp. 320–2; On the cessation of the Patriarchate see H. Shapira, 'The Deposition of Rabban Gamaliel: Between History and Legend', *Zion*, 64 (1999), pp. 5–38 (Hebrew), with comprehensive bibliography.

42. Linder, *Jews*, pp. 189–90, 197–8, 264.

43. Ibid., p. 264.

44. Ibid., pp. 199–200.

45. Ibid., pp. 194–5.

46. On the restrictions of civil rights of Jews and the deterioration of their status as citizens of the empire see ibid., pp. 65–6.

47. Ibid., pp. 284–5, no. 46.

48. See ibid., pp. 357–8 (text), 360–1 (trans.).

49. On the Iranian class system see pp. 137–41.

50. Perikhanian, 'Iranian Society', pp. 634–5.

51. For an English translation see A. Perikhanian, *The Book of a Thousand Judgments*, New York 1980; M. Macuch, *Das sasanidische Rechtsbuch Mātakdān i hazār Dātistān (Teil II)*, Abhandlungen für die Kunde des Morgenlandes XLV, 1 Wiesbaden 1981; M. Macuch, '*Mādayān ī hazār dādestān* (Book of a Thousand Judgments), Pahlavi Law-Book from the Late Sasanian Period (First Half of the Seventh Century)', in *Encyclopedia Iranica*, online.

52. Middle Persian documents alternately use the terms *āzāt*; *hamnāf* (lit. 'agnate'); *ādēhīk* (lit. 'fellow countryman'); and *mart-i-shahr* ('citizen'). See Perikhanian, 'Iranian Society', pp. 634–5, and additional bibliography there.

53. Perikhanian, 'Iranian Society', pp. 634–5.

54. See Linder, *Jews*, nos. 11, 44, 59, and esp. 61; for a summary of Roman legislation on this issue see pp. 82–5.

55. See Perikhanian, *Judgments*, pp. 28–9, clause 1, 10–13.

56. Ibid., pp. 28–9, clause 1, 13–15, 1, 16–17.

57. On the situation of Christians under Sasanian rule see J. R. Russel, 'Christianity in Pre-Islamic Persia: Literary Sources', *Encyclopedia Iranica*, vol. V, pp. 524–6; A. Christensen, *L'Iran sous les Sasanids*, Osnabrück 1971, pp. 263–99.

58. See J. Neusner, *A History of the Jews in Babylonia*, vol. V: *Later Sasanian Times*, Leiden 1970, pp. 1–112, esp. 69–72; G. Widengren, 'The Status of the Jews in the Sasanian Empire', *Iranica Antiqua*, 1 (1961), pp. 117–62, at pp. 141–3; on the Jewish community in Babylonia see Y. Elman, 'Middle Persian Culture and Babylonian Sages: Accomodation and Resistance in the Shaping of Rabbinic Legal Tradition', in Charlotte E. Fonrobert and Martin S. Jaffee, eds., *Cambridge Companion to the Talmud and Rabbinic Literature*, Cambridge 2007, pp. 165–97; I. M. Gafni, *The Jews of Babylonia in the Talmudic Era: A Social and Cultural History*, Jerusalem 1990; M. Beer, *The Babylonian Exilarchate in the Arsacid and Sasanian Periods*, Jerusalem 1970; M. Beer, *The Babylonian Amoraim: Aspects of Economic Life*, Ramat Gan 1982.

59. Widengren, 'Jews', p. 158; this was also attempted by Shāpūr II. See Christensen, *L'Iran*, p. 267.

60. Neusner, *History*, pp. 1–34; Christensen, *L'Iran*, pp. 268–73.

61. Neusner, *History*, pp. 7–8; Christensen, *L'Iran*, pp. 270–1.

62. See, chap. 1.

63. Widengren, 'Jews', pp. 140–1; Christensen, *L'Iran*, p. 110; Neusner, *History*, pp. 43–4; on the status of the *resh galutha* see now G. Herman, 'The Sasanian

Exilarchate in Babylon', Ph.D. thesis, the Hebrew University, Jerusalem 2005 (Hebrew), chaps. 5, 6, pp. 241–66, forthcoming in English: *A Prince without a Kingdom*, Texts and Studies in Ancient Judaism, Tübingen. On the status of the Nestorian *Catholicos* see also chap. 7. See also n. 308.

64. Widengren, 'Jews', p. 155; Christensen, *L'Iran*, p. 270–1, 284–9.
65. Widengren, 'Jews', p. 156.
66. See Linder, *Jews*, pp. 31–2.
67. Ibid., pp. 46–7.
68. See A. Schminck, 'Basilika', in Kazhdan *et al*., eds., *Oxford Dictionary of Byzantium*, vol. I, p. 265; A. Kazhdan, 'The Basilika as a Source', ibid., pp. 265–6.
69. See chap. 2, nn. 53–5.
70. Linder, *Jews*, p. 230–1.
71. Ibid., pp. 298–9.
72. See chap. 2, nn. 37–49.
73. Although some jurisprudents continued the theoretical discussion, and interpreted *Shurūṭ ʿUmar* according to the developing needs and views of their times. See Fattal, *Le statut*, pp. 174–8.
74. See p. 117, for the Byzantine law.
75. For the Byzantine law stating that 'we prohibit … that any synagogue shall be erected in a new building, granting leave to prop up the old ones which threaten immediate ruin' see Linder, *Jews*, pp. 327, 329–30. The fact that this was indeed the policy in the early days of Islam is corroborated well by the story regarding the repair works that were made by Thomas, Patriarch of Jerusalem in the beginning of the ninth century, when the dome of the Church of the Holy Sepulchre had to be rebuilt after having collapsed. The argument between Thomas and the Muslim authorities was about whether he had rebuilt the dome according to its previous measurements, or had taken this opportunity to enlarge it, so that it was now larger than the Dome of the Rock. See Eutychius, *Taʾrīkh*, pp. 55–6.
76. Ibn ʿAsākir, *Taʾrīkh*, vol. II, p. 174 or p. 178; Ibn al-Murajjā, *Faḍāʾil*, p. 56: ‏.ولا نجيء ما كان منها في خطط المسلمين
77. Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. I, p. 659; al-Ṭurṭūshī, *Sirāj*, pp. 352–3; see chap. 2, nn. 83–8.
78. See al-Shāfiʿī, *Kitāb al-umm*, vol. IV, pp. 132, 188; al-Shaybānī, *Kitāb al-mabsūṭ*, ed. Abū al-Wafāʾ al-Afghānī, Karachi, n.d., vol. V, p. 213 (al-Sarakhsī, *Kitāb al-mabsūṭ*, Beirut 1994, vol. XIII, p. 130); Fattal, *Le statut*, p. 149, who notes the affinity to the Byzantine law; Friedmann, *Tolerance*, pp. 162–3.
79. Al-Ṭurṭūshī, *Sirāj*, p. 401.
80. See R. Brunschvig, "Abd', *EI²*, vol. I, pp. 24–40.
81. See Goitein, *Mediterranean Society*, vol. I: *Economic Foundations*, Berkeley 1967, pp. 130–47.
82. See Fattal, *Le statut*, pp. 236–40.
83. See n. 64.
84. See Ibn Zabr, 'Juzʾ', pp. 151–2; Ṭabarī, *Taʾrīkh*, vol. III, p. 1390; Ibn al-Jawzī, *al-Muntaẓam*, vol. XI, pp. 222–3, 238; Ibn Naqqāsh, 'Fetoua'; Aḥmad b. ʿAlī al-Qalqashandī, *Ṣubḥ al-aʿsā fī sināʿat al-inshā*, Cairo 1964, vol. XIII,

pp 366–8; see also the story about the Jewish tax-collector in Ḥasan b. ʿAlī al-Ṭūsī (= Niẓām al-Mulk), *Siyar al-mulūk*, trans. H. Darke, London 1978, pp. 170–3.

85. Q 3:28, 3:118, 4:115, 4:141, 4:144, 5:51, 5:57, 9:8, 9:10, 9:23, 60:1, 60:13.

86. Fattal notes that this doctrine was undoubtedly based on the Byzantine legislation: *Le statut*, p. 239.

87. Ṭabarī, *Taʾrīkh*, vol. III, p. 390; Kramer, *Decline*, p. 90.

88. Friedmann, *Tolerance*, pp. 121–59; as early as the eighth century opinions among Muslim jurists varied as to the latitude that should be given to an apostate to repent before the execution of the capital punishment. See ibid., pp. 128–32.

89. See Fattal, *Le statut*, pp. 129–34; Friedmann, *Tolerance*, pp. 160–93, esp. 161–2.

90. Fattal, *Le statut*, pp. 138–9.

91. Ibid., pp. 137–44; Friedmann, *Tolerance*, pp. 35, 187.

92. Friedmann, *Tolerance*, p. 35.

93. Linder, *Jews*, pp. 237–8, 285.

94. Fattal, *Le statut*, pp. 122–4; Friedmann, *Tolerance*, pp. 149–52.

95. Abū ʿUbayd, *Amwāl*, ed. ʿImāra, p. 271, para. 484 (=*Amwāl*, p. 179, para. 482).

96. See al-Shāfiʿī, *Kitāb al-umm*, vol. IV, p. 118; see chap. 2, nn. 115, 116, citing Christian sources proudly relating defamation of Islam by Christians during the eighth and the ninth centuries.

97. See below.

98. See P. Crone, *Roman, Provincial and Islamic Law*, Cambridge 1987, pp. 1–17, which provides a comprehensive survey of the previous views on the question; see also P. C. Hennigen, *The Birth of a Legal Institution: The Formation of the Waqf in Third-Century AH Ḥanafī Legal Discourse*, Leiden 2004. Hennigen also supports the claim that Muslim law was based on an array of laws from different Near Eastern societies: see pp. 60–9.

99. See chap. 2, nn. 50–2.

100. Some, though not all, of these rules appear in *Shurūṭ ʿUmar*. These include the laws regarding churches and synagogues (clause 1); conversion to Islam (clause 4); and, partially, the law regarding the ownership of slaves (clause 13).

101. See Noth, ‘Abgrenzungsprobleme’.

102. The issue of rearing pigs does not appear in al-Ṭurṭūshī, *Sirāj*, but does appear in Ibn al-Murajjā, *Faḍāʾil*, p. 56, and in Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. II, p. 659.

103. See the versions in Ibn al-Murajjā, *Faḍāʾil*, p. 59; Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. II, p. 659; Ibn ʿAsākir, *Taʾrīkh*, vol. II, p. 179.

104. See n. 39; and nn. 92–3.

105. Ibn al-Murajjā, *Faḍāʾil*, p. 57; Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. II, p. 660; Ibn Zabr, ‘Juz’’, p. 137.

106. See an even more detailed version in Ibn ʿAsākir, *Taʾrīkh*, vol. II, pp. 179–80, regarding ولا نتشبه بهم في شيء في لباسهم في قلنسوة ولا عمامة ولا سراويل ذات خدمة, ولا نعلين ذات عذبة, ولا نمشي الا بزنار من جلد (chap. 3, nn. 19–21).

107. See M. Kister, '"Do Not Assimilate Yourselves …" *Lā tashabbahū*', *Jerusalem Studies in Arabic and Islam*, 12 (1989), pp. 321–53; on this subject, see extensively below.

108. See Noth, 'Abgrenzungsprobleme', pp. 305–7; trans. Muelhaeusler, pp. 114–18.

109. See chap. 3.

110. Kister, '*Lā tashabbahū*', pp. 323–5.

111. Ibid., p. 349.

112. The intimate connection between the Sasanian and Muslim social ideologies has been demonstrated in L. Marlow, *Hierarchy and Egalitarianism in Islamic Thought*, Cambridge 1997 pp. 66–77; see also D. Gutas, *Greek Thought, Arabic Culture: The Graeco-Arabic Translation Movement in Baghdad and Early ʿAbbāsid Society (2nd–4th/8th–10th Centuries)*, London and New York 1998 p. 29, which claims that 'the ʿAbbāsid dynasty, in addition to being the descendants of the prophet … was at the same time the successor of the ancient imperial dynasties in ʿIrāq and Irān, from the Babylonians through the Sasanians, their immediate predecessors'.

113. On the process of Islamization of Zoroastrian Iran see J. Choksy, *Conflict and Cooperation: Zoroastrian Subalterns and Muslim Elites in Medieval Iranian Society*, New York 1977.

114. P. Cartledge, *Alexander the Great: The Hunt for a New Past*, Woodstock and New York 2004, p. 190.

115. See T. Gergel, ed., *Alexander the Great: Selected Texts from Arrian, Curtius and Plutarch*, New York 2004, p. 82 (Plutarch), pp. 103–4 (Curtius); M. Broisus, 'Alexander and the Persians', in J. Roisman, ed., *Brill's Companion to Alexander the Great*, Leiden 2003, pp. 169–93. Broisus claims that 'despite Alexander's adaptation of many features of Persian kingship and imperial rule, there's no evidence to suggest that these adaptations were any more than superficial statements which lacked political knowledge and understanding of the organization of the Persian empire and its administration' (p. 173); E. Fredricksmeyer, 'Alexander and the Kingship of Asia', in A. B. Bosworth and E. J. Baynham, eds., *Alexander the Great in Fact and Fiction*, Oxford 2000, pp. 136–66; Cartledge, *Alexander*, pp. 201–3.

116. See A. B. Bosworth, *Conquest and Empire: The Reign of Alexander the Great*, Cambridge 1988, pp. 284–7; Fredricksmeyer, 'Alexander'.

117. T. A. Sinclair, *A History of Greek Political Thought*, London 1951, p. 287.

118. The most prominent example of this being the depiction of the emperor Justinian and the empress Theodora in the impressive mosaic in the Church of San Vitale in Ravenna (dedicated in 547), in which the emperor appears crowned in imperial purple, with his courtiers, guards, and clerics, while the crowned Theodora is depicted with her brilliantly gowned handmaidens. The edges of Theodora's robe are outlined by a embroidered gold hem, a prestigious status symbol both in Byzantium and in Persia, which was adopted in the caliphate under the name of *ṭirāz*. On the Ravenna mosaics see I. Andreescu-Treadgold and W. Treadgold, 'Procopius and the Imperial Panels of San Vitale', *Art Bulletin*, 99 (1997), pp. 708–23.

119. See B. Croke, 'Justinian's Constantinople', in M. Maas, ed., *The Cambridge Companion to the Age of Justinian*, Cambridge 2005, pp. 60–86.

120. See S. Gordon, 'A World of Investiture', in S. Gordon, ed., *Robes and Honor: The Medieval World of Investiture*, New York 2001, pp. 1–22, at pp. 10–12.

121. M. M. Mango, 'Status and its Symbols', in C. A. Mango, ed., *The Oxford History of Byzantium*, Oxford 2002, pp. 60–3, esp. p. 60.

122. J. Rose, 'Sasanian Splendor: The Appurtenances of Royalty', in S. Gordon, ed., *Robes and Honor: The Medieval World of Investiture*, New York 2001, pp. 35–58, at pp. 48–9, citing D. Talbot-Rice, *Art of the Byzantine Era*, London 1963, pp. 44–52. C. A. Bromberg, 'Sasanian Royal Emblems in the Northern Caucasus', in G. Gnoli and A. Panaino, eds., *Proceedings of the first European Conference of Iranian Studies*, part 1, Rome 1990, pp. 1–18 emphasizes the wide influence of royal Iranian emblems and symbols outside Sasanian society, saying: 'In the Byzantine world as in the Orient, Sasanian concepts of majesty retained their value long after the Empire had vanished before the onslaught of Islam, and the special emblems of the Sasanian ruler spoke of authority and legitimacy to Byzantine, Armenian or Muslim courtiers, or to Barbarian tribesmen' (p. 13).

123. See e.g. J. Haldon, 'Economy and Administration: How did the Empire Work?', in Maas, ed., *Age of Justinian*, pp. 28–59, at p. 36. He adds that 'such opportunities were by definition very limited, however, so that the vast majority of the population undoubtedly remained in the social group into which they were born'; see also R. MacMullen, 'Social Mobility and the Theodosian Code', *Journal of Roman Studies*, 54 (1964), pp. 49–53.

124. On this issue see nn. 194–5.

125. See Levy-Rubin, 'Changes'.

126. This idea is expressed clearly by Marlow, *Hierarchy*, p. 65: 'In the case of Iran, the Arabs rapidly conquered the entire region of the former Sasanian empire, and Iranians converted to Islam early and in large numbers. As a result, in Iran (and Iraq) the Arabs came into contact with a living tradition which had large numbers of spokesmen to ensure that it was perpetuated'; see also Morony, *Iraq*, pp. 199–208.

127. Silk was the most prestigious fabric in both the Byzantine and Sasanian empires. The Byzantines, who were dependent on the Persians for its supply, went to great lengths to obtain it and to try to circumvent the need for Persian mediation. In the sixth century the emperor Justinian managed to establish a silkworm industry in Constantinople. See G. Greatrex, 'Byzantium and the East in the Sixth Century', in Maas, ed., *Age of Justinian*, pp. 477–509, at pp. 501–2.

128. Different variations of this story appear in Muslim and Christian sources. See e.g. Ibn al-Murajjā, *Faḍāʾil*, p. 49 (in the name of Muḥammad b. ʿĀʾidh al-Qurashī, d. 233/4, see p. 44, n. 2); Dionysius of Tell-Maḥrē in Palmer *et al.*, *Chronicles*, para. 75, p. 162; Theophanes, *Chronographia*, p. 339; Agapius b. Maḥbūb, *ʿUnwān*, pp. 213–15.

129. Dionysius of Tell-Maḥrē in Palmer *et al.*, *Chronicles*, para. 75, p. 162. On ʿUmar I's entry to Jerusalem see Della Vida, "ʿUmar (I) b. al-Khaṭṭāb', p. 820; and Crone and Hinds, *God's Caliph*, pp. 113–14.

130. Aḥmad b. Yaḥya al-Balādhurī, *Ansāb al-ashrāf*, ed. M. Schloessinger, vol. IVa, Jerusalem 1971, p. 125.

131. Al-Ṭabarī, *Ta'rīkh*, vol. I, p. 2402; Friedmann, *Battle*, pp. 188–9. *Yalmaq* (pl. *yalāmiq*) is an Arabicized form of the Persian word taken in its turn from the Turkish, meaning a thick quilted coat. For this, see G. Clauson, *An Etymological Dictionary of Pre-Thirteenth-Century Turkish*, Oxford 1972, p. 92.

132. See al-Qalqashandī, *Ṣubḥ*, vol. III, p. 266; Ibn Khaldūn, who dedicates a full chapter to 'The transformation of the caliphate into royal authority', notes apologetically that 'Umar meant by "royal Sasanian manners" (كسروية) the attitude of the Sasanian rulers, which consisted in doing worthless things, constantly practicing oppression and neglecting God. Mu'āwiyah replied that he was not interested in royal Sasanian manners as such, or in the worthlessness connected with them, but his intention was to serve God. Therefore, 'Umar was silent' ('Abd al-Raḥmān b. Khaldūn, *al-Muqaddima li-l-'allāma Ibn Khaldūn*, Beirut n.d., p. 160; trans. F. Rosenthal as *The Muqaddimah*, London 1967, vol. I, p. 417).

133. Ibn Khaldūn, *Muqaddimah*, trans. Rosenthal, vol. I, p. 417, vol. II, p. 50.

134. Kalfon-Stillman, *Arab Dress*, pp. 16, 22–23; Muḥammad b. 'Isā al-Tirmidhī, *Sunan*, Beirut 1983, 'Abwāb al-libās', vol. III, nos. 1774–89, 1792–9, 1807–8.

135. See G. E. von Grünebaum, *Islam: Essays in the Nature and Growth of a Cultural Tradition*, London 1961, p. 36.

136. See E. Bosworth, 'The Heritage of Rulership in Early Islamic Iran and the Search for Dynastic Connections with the Past', *Iran*, 11 (1973), pp. 51–62.

137. Kalfon-Stillman, *Arab Dress*, pp. 29–61.

138. See Morony, *Iraq*, p. 263.

139. Ibid., pp. 32–42.

140. See B. Spüler, *Iran in Früh-Islamischer Zeit*, Wiesbaden 1952, pp. 515–16. Al-Balādhurī describes how, following the conquest of Kunduhar, the conqueror, 'Abbād b. Ziyād, 'saw there the tall *qalansuwas* of its people and had some made in that fashion, and they were called (after him) al-'Abbād iyya': al-Balādhurī, *Buldān*, p. 434.

141. Kalfon-Stillman, *Arab Dress*, p. 35.

142. See R. Talgam, 'The Stylistic Origins of Umayyad Sculpture as Shown in Khirbat al-Mafjar and Mshatta', Ph.D. thesis, Hebrew University, Jerusalem 1996 (Hebrew with English abstract), pp. 165–6.

143. Ibid.

144. Ibid., pp. 35–6.

145. See ibid., pp. 136–51; R. Ettinghausen and O. Grabar, *The Art and Architecture of Islam 650–1250*, Harmondsworth 1987, pp. 56–70.

146. Kalfon-Stillman, *Arab Dress*, pp. 36–7.

147. Ibid., p. 42.

148. Ibid., p. 47.

149. P. Sanders, 'Marāsim', *EI²*, vol. VI, pp. 518–20; P. Gignoux, 'Courts and Courtiers iii', *Encyclopedia Iranica*, vol. VI, pp. 356–64; Bosworth, 'Heritage'; D. Sourdel, 'Questions de cérémonial 'abbāsside', *Révue des Études Islamiques*, 28 (1960), pp. 121–48.

150. See e.g. Pseudo-al-Jāḥiẓ, in the mid-ninth century, who says: ولنبدأ بملوك الاعاجم
أذ كانوا هم الاول في ذلك وعنهم أخذنا قوانين الملك والمملكة وترتيت الخاصة والعامة وسياسة الرعية
والزام كل طبقة خطّها والاقتصار علي جذيلتها (Pseudo-al-Jāḥiẓ, *Kitāb al-tāj*, ed. A. Z.
Pacha, Cairo 1914, p. 23); French trans. C. Pellat as *Le livre de la cou-
ronne attribué à Gaḥiz*, Paris 1954, p. 51; Abū al-Hasan ʿAlī b. Ḥusayn
al-Masʿūdī, *Murūj al-dhahab wa-maʿādin al-jawhar*, ed. and French
trans. Barbier de Meynard and Pavet de Courteille as *Les prairies d'or*,
Paris 1866–77, vol. II, pp. 156–9; rev. edn C. Pellat, Beirut 1966, vol. I,
pp. 286–87; rev. trans. C. Pellat as *Masʿūdī, Les prairies d'or*, Paris 1962,
pp. 218–19,.

151. See Ibn Khaldūn, *Muqaddimah*, trans. Rosenthal, vol. II, p. 48ff.–72; see
S. Shaked, 'From Iran to Islam: On Symbols of Royalty', *Jerusalem Studies
in Arabic and Islam*, 7 (1986), pp. 75–91.

152. See Kalfon-Stillman, *Arab Dress*, p. 48, citing Abū al-Ḥusayn Hilāl b.
al-Muḥassin al-Ṣābī, *Rusūm dār al-khilāfa*, ed. M. ʿAwwād, Baghdad 1964,
p. 91–2, trans. E. Salem as *The Rules and Regulations of the ʿAbbāsid
Court*, Beirut 1977, p. 74. Regarding red as the color of royal clothing
in the Sasanian period, see J. Rose, 'Investiture' (in The Sasanian Period),
Encyclopedia Iranica, vol. XIII, p. 186, citing C. Manson Bier, 'Textiles', in
Prudence Oliver Harper, *The Royal Hunter: Art of the Sasanian Empire*,
New York 1978, p. 123 (unfortunately, I was not able to consult this book).

153. See C. E. Bosworth, 'Laqab', *EI²*, vol. V, p. 619: 'Within a formalized hier-
archical society such as the Islamic one became in the ʿAbbāsid period,
modes of address, insignia or rank and office, dress, etc., all contributed to
the fixing of a man's status in society and the state, and as such were prized
as the visible and audible symbols of success in the temporal world.'

154. See Pseudo-al-Jāḥiẓ, *Tāj*, p. 23.

155. Abū ʿUmar Aḥmad b. Muḥammad b. ʿAbd Rabbih, *al-ʿIqd al-farīd*,
Cairo 1321.

156. See Hilāl al-Ṣābīʾ, *Rusūm*; Hilāl al-Ṣābīʾ, *Rules*. See also Ṭūsī, *Siyar*.

157. See Rose, 'Investiture'; Rose, 'Sasanian Splendor', pp. 47–8.

158. On both of these see A. Tafazzoli, *Sasanian Society*, New York 2000,
pp. 18–59; on the *dihqān*s see M. Zakeri, *Sāsānid Soldiers in Early
Muslim Society: The Origins of ʿAyyārān and Futuwwa*, Wiesbaden 1995,
pp. 43–56, 55–69, 101–12.

159. See chap. 5, n. 49.

160. On this, see below.

161. Tafazzoli, *Sasanian Society*, pp. 18–37.

162. Ibid., p. 41; Zakeri, *Soldiers*.

163. On the status and role of the *dihqān*s following the conquest see Morony,
Iraq, pp. 200–6. On conversions of *dihqān*s to Islam see esp. p. 205; Zakeri,
Soldiers, pp. 101–12, regarding the issue of their conversion see pp. 102–5.

164. See e.g. Theophanes, *Chronographia*, p. 367; Theophanes, *Chronicle*,
pp. 524–5; Palmer *et al.*, *Chronicles*, pp. 202–4; R. Frye, *The Golden Age of
Persia: The Arabs in the East*, London 1975, pp. 18–19; Tafazzoli, *Sasanian
Society*, p. 43. This phenomenon was not sweeping, and there were *dihqān*s
who refused to cooperate and chose to flee or resist: see Tafazzoli, *Sasanian
Society*, pp. 44–5.

165. See Tafazzoli, *Sasanian Society*, pp. 43–59; Frye, *Golden Age*, pp. 16–26.

166. On Sasanian Iran see V. S. Curtis and S. Stewart, *The Sasanian Era: The Idea of Iran*, vol. III, London 2008; Pourshariati, *Decline*; J. Wiesehöfer, *Ancient Persia from 550 BC to 650 AD*, London and New York 1996; Christensen, *L'Iran*.

On the class system specifically see M. Shaki, 'Class System: iii', *Encyclopedia Iranica*, vol. V, pp. 654–8; Marlow, *Hierarchy*, pp. 66–77; Rubin, 'Nobility'; Z. Rubin, 'Eastern Neighbours: Persia and the Sasanian Monarchy (224–651)', in Jonathan Shepard, ed., *Cambridge History of the Byzantine Empire*, vol. I, Cambridge 2008, pp. 139–55; Tafazzoli, *Sasanian Society*, pp. 2, 20; Perikhanian, 'Iranian Society', pp. 632–6; Frye, *Golden Age*, p. 18.

167. On this see P. O. Skjærvø, 'Class System: i: in the Avesta', *Encyclopedia Iranica*, vol. V, pp. 650–1, where it is noted that there may also have been a tradition of four estates in the Avesta.

168. For a thorough review of this issue and a comprehensive bibliography see Marlow, *Hierarchy*, pp. 68–72.

169. Perikhanian, 'Iranian Society', pp. 632–3; E. Benveniste, 'Les classes sociales dans la tradition avestique', *Journal Asiatique*, 221 (1932), pp. 117–34.

170. Tafazzoli, *Sasanian Society*, p. 27, citing Abu'l-Qasim Firdausī, *Shāhnāma*, ed. E. Bertel *et al.*, Moscow 1966–71, vol. VIII, pp. 297–9: Firdausī, *Shāhnāmah*, vol. VI, pp. 413–17.

171. See Abū Manṣūr ʿAbd al-Malik b. Muḥammad b. Ismāʿīl al-Thaʿālibī, *Ghurar akhbār mulūk al-Furs: Histoire des rois des Perses*, ed. and trans. H. Zotenberg, Paris 1900, p. 608.

172. See chap. 4, nn. 39 and nn. 62–4.

173. See Benveniste, 'Classes sociales', pp. 119–20; 130–4. On pp. 132–4 he adduces Firdausī's version with some minor but illuminating corrections; see also al-Ṭabarī, *Ta'rīkh*, vol. I, p. 180: وصنف الناس اربع طبقات: طبقة مقاتلة وطبقة فقهاء وطبقة كتابا وصناعا واتخذ طبقة منهم خدما وأمر كل طبقة من تلك الطبقات بلزوم العمل الذي الزمه اياه ; al-Thaʿālibī, *Ghurar*, pp. 11–12.

174. See Tafazzoli, *Sasanian Society*, p. 41 for different versions by al-Ṭabarī, *Ta'rīkh*, vol. I, p. 434; al-Thaʿālibī, *Ghurar*, pp. 6–7, 67–68 and more; see also Zakeri, *Soldiers*, pp. 45–6. citing al-Bīrūnī, *al-Āthār al-bāqiya ʿan al-qurūn al-khāliya*, ed. E. C. Sachau, Leipzig 1879, pp. 220–221; trans. E. C. Sachau as *The Chronology of Ancient Nations*, Leipzig 1897, p. 206. On Manūshihr, see E. Yarshater, 'Iranian National History', in Yarshater, ed., *Cambridge History of Iran*, vol. III (1), pp. 433–4; A. Tafazzolī, 'Dehqān', *Encyclopedia Iranica*, vol. VII, pp. 223–5.

175. See M. Grignaschi, 'Quelques spécimens de la littérature sassanide conservés dans les bibliothèques d'Istanbul', *Journal Asiatique*, 254 (1966), pp. 1–135.

176. Ibid., p. 54 (French trans. p. 74); I. Abbas, *ʿAhd Ardashīr*, Beirut 1967, pp. 62–4.

177. See Grignaschi, 'Spécimens', p. 54 (French trans. p. 74); and Abbas, *ʿAhd Ardashīr*, pp. 62–4; a similar text, which contains an admonition to the king regarding the confusion of the social order, and describing the

four-class structure, is found in Pseudo-al-Jāḥiẓ, *Tāj*, pp. 24–5 (see also Pellat trans., *Couronne*).

178. Grignaschi, 'Spécimens', pp. 4–5.

179. *Kitāb al-tāj fī sīrat Anūshirwān li-Ibn al-Muqaffaʿ*: Grignaschi, 'Spécimens', intro. pp. 4–5, 101–8 (text), 129–35 (French trans.).

180. Ibid., p. 103: ويجلس الناس على مراتبهم ويختلفون في الزينة ليومهم

181. Christensen, *L'Iran*, pp. 63–6, argues that it was written in the sixth century; Boyce in the introduction to M. Boyce, trans., *The Letter of Tansar*, Rome 1968, pp. 5–22, supports an early date with later additions; Shaked, 'Transmission', p. 55, n. 22, does not negate the possibility of its having been written in the third century.

182. See Yarshater, ed., *Cambridge History of Iran*, vol. III (2), pp. 731, 933, 1184, 1272.

183. *Nameh Tansar*, ed. M. Minovi, Tehran 1932 p. 19; Boyce, trans., *Letter of Tansar*, p. 44.

184. *Nameh Tansar*, pp. 23–4; Boyce, trans., *Letter of Tansar*, pp. 48–9.

185. *idhā kuntumū li-ʿnnāsi ahla siyāsatin*
fa-sūsū kirāma ʾnnāsi bi-ʿrrifqi waʾl-badhli
wa sūsū liʾām ʾnnāsi bi-ʿdhdhulli yaṣlaḥū
ʿalā ʾdhdhulli innā ʾdhdhulla aṣlaḥū li-ʾl-nadhli:
    Nameh Tansar, p. 37 (=Letter of Tansar in Ibn Isfandiyār, *Taʾrīkh Ṭabaristān*, ed. ʿAbbās Iqbāl, Tehran 1942, p. 35); Boyce, trans., *Letter of Tansar*, p. 60.

186. See Grignaschi, 'Spécimens', pp. 2–3, 91–102 (text), 111–28 (French trans.).

187. Ibid., p. 94.

188. See Christensen, *L'Iran*, pp. 316–20; for the opposing views see esp. Pourshariati, *Decline*; and Rubin, 'Nobility'.

189. See Boyce, trans., *Letter of Tansar*, pp. 43–4:
    As for another passage in which you wrote … 'The King of Kings has had established new customs and new ways …', know that the decay of family and rank is twofold in nature. In the one case men pull down the family and allow rank to be unjustly lowered; in the other it is time itself without another's endeavour which deprives them of honour and worth and the splendour of position. Degenerate heirs appear who adopt boorish ways and forsake noble manners and lose their dignity in the sight of the people. They busy themselves like tradesmen with the earning of money, and neglect to garner fair fame. They marry among the vulgar and those who are not their peers, and from that birth and begetting men of lower character appear; and this is what is meant by 'decadence of rank'. The Kings of Kings has issued a decree to exalt and ennoble their rank, whose like we have not heard from any man.

190. See Rubin, 'Nobility', pp. 246–59; Pourshariati, *Decline*, pp. 2–156.

191. Rubin, 'Nobility', p. 243.

192. See R. Gyselen, *Le géographie administrative de l'empire sassanide: les témoignages sigillographiques*, Paris 1989, pp. 152, 156.

193. Pourshariati, *Decline*, p. 92.

194. See Marlow, *Hierarchy*, pp. 66–90; see also the survey on social strati-
     fication in Iranian and Muslim society in M. Shaki, 'Class System iii: In
     the Parthian and Sasanian Periods' and A. Ashraf and A. Banuazizi, 'Class
     System iv: Classes in Medieval Islamic Persia', *Encyclopedia Iranica*, vol. V,
     pp. 654–67; on this particular issue see pp. 662–6, with references to A. K.
     S. Lambton, *Theory and Practice in Medieval Persian Government*, London
     1980, chap. 7; A. K. S. Lambton, *Continuity and Change in Medieval
     Persia*, Albany 1988, pp. 221–346, esp. pp. 221–4.
195. See Marlow, *Hierarchy*; for a good survey of this subject see Shaki, 'Class
     System iii'; Ashraf and Banuazizi, 'Class System iv'.
196. See Gutas, *Greek Thought*, pp. 29–60.
197. See I. Goldziher, *Muhammedanische Studien*, Halle 1889–90, vol. I, chap. 3,
     pp. 101–46, ed. and trans. C. R. Barber and S. M. Stern as *Muslim Studies*,
     New York 1977, pp. 98–136; P. Crone, 'Mawlā', *EI²*, vol. VI, pp. 874–82;
     R. Levy, *The Social Structure of Islam*, Cambridge 1957, pp. 53–67.
198. Crone, 'Mawlā', p. 876, citing al-Balādhurī, *Ansāb*, vol. IVb, p. 10; see also
     chap. 3, n. 71.
199. See Crone, 'Mawlā', regarding marriage, *diya*, and positions, and refer-
     ences there.
200. See Goldziher, *Muhammedanische Studien*, vol. I, p. 267; Goldziher,
     Muslim Studies, p. 242.
201. See Levy, *Social Structure*, p. 59; Muḥammad b. Yazīd al-Mubarrad, *Kitāb
     al-kāmil*, ed. W. Wright, Leipzig 1864, pp. 711–12.
202. Shāfiʿī, *Kitāb al-umm*, vol. IV, p. 118. See also Levy-Rubin, *Continuatio*,
     pp. 91–2: 'he should not sit in front on a velvet-like sofa (مرتبة خمال)'.
203. Al-Ṭabarī, *Taʾrīkh*, vol. III, pp. 1390–91,
204. Ibid., vol. I, p. 962.
205. See nn. 106–10.
206. See *Nameh Tansar*, p. 19.
207. Ibid., p. 23. This is based on a slight emendation of the text, as well as
     Boyce's translation of it: وقصد اوساط تقدير instead of وقصد اوساط وتقدير. I would
     like to thank Dr Vera Moreen and Dr Julia Rubanovich for their aid in
     reading the Persian text.
208. The Letter of Tansar was translated from Pahlavi into Arabic by Ibn
     al-Muqaffaʿ (d. *c.* 760 CE), a translation which was lost, and then again
     into New Persian in the thirteenth century. Only the New Persian version
     has survived (on this see Boyce's introduction to *Letter of Tansar*). Still,
     even in Ibn al-Muqaffaʿ's time, *ghiyār* would already have been a 'taken
     word,' kept for non-Muslims, and therefore other analogous terms in
     Arabic were most probably chosen by him. The words used in the New
     Persian translation for *difference*, or *distinction*, i.e. *tafāwut*, *tamyīz*, and
     taqdīr, all originate in Arabic rather than in Pahlavi, and may have been
     used by Ibn al-Muqaffaʿ in the Arabic translation.
209. See Lukonin, 'Institutions', pp. 683–98.
210. Ibid., p. 699–700.
211. See ibid., pp. 709–13.

212. Unlike the Sasanian Book of Ranks, which has been lost, but which, according to al-Masʿūdī, included at its apogee 600 ranks. See M. L. Chaumont, 'L'order des préséances à la cours des Arsacides d'Armenie', *Journal Asiatique*, 254 (1966), pp. 471–97, at p. 491, n. 3.

213. See Gignoux, 'Courts and Courtiers', citing *Généalogie de la famille de saint Grégoire et vie de saint Nersēs*, Venice 1853, pp. 32–9 (in Armenian); Chaumont, 'Préséances'; Shaked, 'Symbols of Royalty', pp. 77–79; N. Adontz, *Armenia in the Period of Justinian*, trans. with partial rev. and bibliog. N. G. Garsoian, Lisbon 1970, pp. 186–8.

214. *Généalogie*; Chaumont, 'Préséances', pp. 481–3.

215. Xenophon, *Cyropaedia*, viii.4.3–5: 'So when invited guests came to dinner, he did not assign them to their seats at random, but he seated on Cyrus's left the one for whom he had the highest regard … and the one who was second in esteem he seated on his right … for he thought it a good plan to show publicly how much regard he had for each one … He did not however assign the appointed places permanently, but he made it a rule that by noble deeds any one might advance to a more honoured seat, and that if anyone should conduct himself ill he should go back to one less honoured' (trans. W. Miller, Loeb Classical Library, Cambridge, MA and London 1979, pp. 375–7; D. Khaleghi-Motlagh, 'Bār' (audience), *Encyclopedia Iranica*, vol. III, pp. 730–4.

216. Masʿūdī, *Murūj*, ed. de Meynard and de Courteille, vol. II, pp. 156–9; ed. Pellat, vol. I, pp. 286–7; trans. Pellat, pp. 218–19; see n. 177, referring to Pseudo-al-Jāḥiẓ, *Tāj*, pp. 24–5, trans. Pellat, pp. 51–3.

217. See Sourdel, 'Questions', pp. 139–40, citing Ṭabarī, *Taʾrīkh*, vol. III, p. 1503.

218. See Hilāl al-Ṣābiʾ, *Rules*, p. 78.

219. Levy-Rubin, *Continuatio*, pp. 91–2; the text originally has *h-m-a-l*, emended to *khaml*, which may be a velvet cushion, or cushion of feathers. For *martaba* in this sense see Sadan, *Mobilier*, pp. 54–6.

220. Shāfiʿī, *Kitāb al-umm*, vol. IV, p. 119.

221. See Ibn Baṭṭūṭa, *Riḥlat Ibn Baṭṭūṭā*, Cairo 1957 pp. 35–36 describing the court of the sultan Muḥammd b. Tughluq: وجلوسه على مصطبة مفروشة بالبياض فوقها مرتبة; and again pp. 38–9, trans. as *The travels of Ibn Battuta, AD 1325–1354*, trans. with revisions and notes from the Arabic text edited by C. Defremey and B. R. Sanguinetti, by H. A. R. Gibb, Cambridge 1958–2000, pp. 660, 666.

222. See al-Ṭabarī, *Taʾrīkh*, vol. III, pp. 1389–90. An additional related requirement is the prohibition on visiting Muslims in their homes. See Ibn al-Murajjā, *Faḍāʾil*, p. 57; Ibn Qayyim al-Jawziyya, *Aḥkām*, vol. II, p. 660.

223. See Kister, '*Lā tashabbahū*', p. 327, n. 23, citing a series of sources.

224. Xenophon, *Cyropaedia*, viii.3.9: see also Gignoux, 'Courts and Courtiers', p. 358 (bottom). On the policemen and the court security police Gignoux cites M. W. Stopler, *Enterpreneurs and Empire: The Murašû Archive, the Murašû Firm and the Persian Rule in Babylonia*, Leiden 1985, p. 63 n. 51, with further references.

225. See a more detailed version in Ibn ʿAsākir, *Taʾrīkh*, vol. II, pp. 179–80, and see another variation on this on p. 185; Ibn Zabr, 'Juzʾ', pp. 139, 140; see also chap. 3, nn. 19–21.

226. See E. H. Peck, 'Clothing vii: From the Arab Conquest to the Mongol Invasion', *Encyclopedia Iranica*, vol. V, pp. 760–70.

227. Al-Ṭabarī, *Taʾrīkh*, vol. I, pp. 2025–6, 2038, and see Zakeri, *Soldiers*, p. 75 for additional references.

228. See Zakeri, *Soldiers*, p. 75 and references there.

229. Al-Jahshiyārī, *Wuzarāʾ*, p. 3; Tafazzoli, *Sasanian Society*, p. 27.

230. Al-Ṭabarī, *Taʾrīkh*, vol. I, p. 434; W. M. Brinner, annot. and trans., *The History of al-Ṭabarī*, vol. III: *The Children of Israel*, Albany 1985, p. 23.

231. Al-Masʿūdī, *Murūj al-dhahab*, vol. I, pp. 247–8, section 662. Tafazzoli, *Sasanian Society*, p. 43.

232. Al-Jāḥiẓ, *Kitāb al-bayān waʾl-tabyīn*, Cairo 1956, pp. 118–19; Kalfon-Stillman, *Arab Dress*, pp. 42–7; see also Sourdel, 'Questions', pp. 133–4.

233. See A. S. Shahbazi, 'Clothing ii: In the Median and Achaemenid Periods', *Encyclopedia Iranica*, vol. V, p. 729; E. H. Peck, 'Clothing iv: In the Sasanian Period', *Encyclopedia Iranica*, vol. V, p. 745; regarding the continuity in fashion see ibid., section viii; G. Widengren, 'Some Remarks on Riding Costume and Articles of Dress among Iranian Peoples in Antiquity', *Arctica: Studia Ethnographica Upsaliensia*, 11 (1956), pp. 228–76, at pp. 275–6.

234. Abū Yūsuf, *Kitāb al-kharāj*, pp. 127–8; see chap. 3.

235. Widengren, 'Riding Costume', p. 259; Kalfon-Stillman, *Arab Dress*, p. 12.

236. On the prestige of silk, see p. 128.

237. For this hairstyle see also al-Tirmidhī, *Sunan*, vol. III, 'Abwāb al-libās', no. 1778, and below, clause 10.

238. Levy-Rubin, *Continuatio*, pp. 241 (text), 91 (trans.).

239. N. Rabbat, 'Ṭirāz', *EI²*, vol. X, pp. 534–8; Kalfon-Stillman, *Arab Dress*, pp. 122–3.

240. See M. Shaki, 'Class System iii: In the Parthian and Sasanian Periods', *Encyclopedia Iranica*, vol. V, p. 654.

241. See A. S. Shahbazi, 'Clothing', *Encyclopedia Iranica*, vol. V, pp. 725–6; W. Hinz, *Darius und die Perser*, Baden-Baden 1976–9, p. 61; Widengren, 'Riding Costume', p. 240; M. Boyce, *History of Zoroastrianism*, Leiden 1982, p. 21.

242. See Kalfon-Stillman, *Arab Dress*, p. 122; for a general survey see e.g. M. Reinhold, 'On Status Symbols', *Classical Journal*, 64/7 (1969), pp. 300–4.

243. See n. 152.

244. Hilāl al-Ṣābīʾ, *Rules*, p. 61.

245. It may be that the Iranian social colour code was at the root of the concept that became central in Islamic culture according to which colour serves as a mark of group identity (not necessarily a social group) or of religio-political allegiance. This does not mean that the same specific colours continued to be the mark of certain groups, but rather that a certain colour chosen could be declared an exclusive social or political indicator.

   Thus the ʿAbbāsids insisted that anyone who entered their court should be dressed in black. This is stressed in a story told by Hilāl al-Ṣābiʾ. When Muḥammad b. ʿUmayr (d. 999 CE) entered the court dressed in white, which he claimed was his family's ancestral colour, he was immediately thrown out. On another occasion, when al-Maʾmūn named ʿAlī al-Riḍā as his heir, he exchanged the traditional ʿAbbāsid black for a formal green attire, as well as flags and banners: see Gignoux, 'Courts and Courtiers', p. 361; Ibn Khaldūn, *Muqaddimah*, trans. Rosenthal, vol. II p. 51. The Fāṭimids would later choose white as their dynastic colour.

246. Al-Ṭabarī, *Taʾrīkh*, vol. III, pp. 1389–94; Kramer, *Decline*, pp. 89–94; on these restrictions see chap. 4.

247. Levy-Rubin, *Continuatio*, pp. 241 (text), 91 (trans.); see chap. 4.

248. See Kalfon-Stillman, *Arab Dress*, p. 44, citing Abū al-Ṭayyib Muḥammad al-Washshāʾ, *Kitāb al-muwashshā aw al-ẓarf wa-al-ẓurafāʾ*, Cairo 1953, p. 161; it should be noted, however, that there were some circumstances in which yellow had other connotations and functions. Thus, Hilāl al-Ṣābiʾ says that descendants of the *anṣār* should wear yellow garments and turbans when appearing before the caliph. He notes, however, that this is theoretical since 'there are no great personages left from among them'. See Kalfon-Stillman, *Arab Dress*, p. 48, citing Hilāl al-Ṣābiʾ, *Rusūm*, pp. 91–2 (Hilāl al-Ṣābiʾ, *Rules*, p. 74). Regarding Walīd II's unusual habit of wearing yellow. which may have been due to Indian influences, see Kalfon-Stillman, *Arab Dress*, p. 34.

249. Tirmidhī, *Sunan*, vol. III, 'Abwāb al-libās', no. 1779; see also Kalfon-Stillman, *Arab Dress*, p. 24, citing al-Bukhārī, *Ṣaḥīḥ*, *kitāb al-libās*, *bāb*s 33–4, vol. IV, ed. Krehl, p. 87.

250. Al-Ṭabarī, *Taʾrīkh*, vol. III, pp. 1389–90.

251. " لأن لا يفخر بالكنية ", see ʿAbd al-Razzāq, *Muṣannaf*, vol. VI, p. 122.

252. See Ibn al-Murajjā, *Faḍāʾil*, p. 228, n. 3 and references there.

253. Ibn ʿAsākir, *Taʾrīkh*, vol. II, p. 183.

254. See Goldziher, *Muhammedanische Studien*, vol. I, p. 267; Goldziher, *Muslim Studies*, p. 242.

255. Ibid.

256. Hilāl al-Ṣābiʾ, *Rules*, p. 49.

257. Al-Ṭūsī, *Siyar*, pp. 149–50.

258. For the following survey see mainly ʿA. S. Shahbazi, 'Asb', *Encyclopedia Iranica*, vol. II, pp. 724–30.

259. See W. Sundermann, 'Artēštār', *Encyclopedia Iranica*, vol. II, p. 661.

260. On the *asbārān* see Zakeri, *Soldiers*, pp. 57–68.

261. Xenophon, *Cyropaedia*, viii, 2.7, trans. Miller, p. 334–5.

262. Jahshiyārī, *Wuzarāʾ*, p. 7.

263. Tafazzoli, *Sasanian Society*, p. 50, citing al-Balādhurī, *Buldān*, p. 271.

264. See F. Viré, 'Faras', *EI²*, vol. II, pp. 784–7.

265. Hilāl al-Ṣābiʾ, *Rules*, pp. 16–17.

266. See e.g. ibid., pp. 75, 77, 80.

267. See al-Maqrīzī, *Khiṭaṭ*, vol. I, p. 387; Hilāl al-Ṣābiʾ, *Rules*, p. 65; see also Sourdel, 'Questions', esp. p. 123, n. 10.

268. See Shahbazi, 'Asb', p. 734, citing Abū'l Faẓl Bayhaqī, *Taʾrīkh Masʿūdī*, ed. ʿAlī Akbar Fayyāẓ, Mashhad 1350/1971, pp. 158, 159, 355, 373, 526.

269. See Abū Yūsuf, *Kitāb al-kharāj*, p. 117.

270. See al-Ṭabarī, *Taʾrīkh*, vol. III, pp. 1389–90; Levy-Rubin, *Continuatio*, pp. 241, 91 (trans.).

271. Levy-Rubin, *Continuatio*, pp. 241, 91 (trans.); Abū Yūsuf, *Kitāb al-kharāj*, p. 127; ʿAlī b. Muḥammad al-Māwardī, *Aḥkām al-sulṭānīya wa-al-wilāyāt al-dīnīya*, Cairo 1994, p. 185.

272. Xenophon, *Cyropaedia*, viii.1.8.

273. P. Calmeyer, E. H. Peck, and W. Sundermann, 'Belt', *Encyclopedia Iranica*, vol. IV, pp. 130–7; see Widengren, 'Riding Costume', *passim*, esp. the illustrations; see Zakeri, *Soldiers*, pp. 49–50 on the military equipment of the *asāwirā*, which included, *inter alia*, a lance, a sword, and a spear.

274. See e.g. Hilāl al-Ṣābiʾ, *Rules*, p. 63: 'On procession days the chief chamberlain comes fully attired in black robe and black turban, wearing sword and belt.'

275. See Hilāl al-Ṣābiʾ, *Rules*, p. 73, describing the caliph in audience: 'He wears a black *ruṣāfiyyah* on his head, and adorns himself with the sword of the prophet may Allah bless him. He also keeps another sword on his left between the two cushions of the throne.' Al-Ṭūsī, *Siyar*, p. 94, talks about 'twenty special sets of arms studded with gold, jewels and other ornaments', which were kept ready so that 'twenty pages finely attired can take these weapons and stand round the throne' when delegations arrive, since 'today, there is no king on earth greater than The Master of the World … So it is fitting that wherever other kings possess one of a thing, our sovereign should have ten … for he has at his command all spiritual and material resources, coupled with sound judgment. In fact, he lacks nothing of majesty and dominion.' See also al-Qalqashandī, *Ṣubḥ*, vol. III, pp. 468–71; M. Canard, 'Lé cérémonial fâtimite et le ceremonial Byzantine', *Byzantion*, 21 (1951), pp. 355–420, at pp. 388–93; see below, clause 11.

276. See Ibn Khaldūn, *Muqaddimah*, trans. Rosenthal, vol. II, pp. 60–5; J. Allan, 'Khatam', *EI²*, vol. IV, pp. 1102–5; Sourdel, 'Questions', p. 135.

277. See Sourdel, 'Questions', p. 135.

278. Bukhārī, *Ṣaḥīḥ*, vol. VII, *libās*, p. 48; Ibn Khaldūn, *Muqaddima*, vol. II, p. 53; Ibn Khaldūn, *Muqaddimah*, trans. Rosenthal, vol. II, p. 61. On traditions regarding the Prophet's seal see al-Tirmidhī, *Sunan*, vol. III, 'Abwāb al-libās', nos. 1792–9. See also chap. 1, pp. 14–15, the signing and sealing of the treaty between the Byzantines and the Persians.

279. Ibn Khaldūn, *Muqaddima*, vol. II, p. 57; Ibn Khaldūn, *Muqaddimah*. trans. Rosenthal, vol. II, p. 65; see also Hilāl al-Ṣābiʾ, *Rules*, pp. 103–4.

280. See note 235.

281. See e.g. al-Tirmidhī, *Sunan*, vol. III, 'Abwāb al-libās', nos. 1808–10.

282. See the various representations in *Glass, Gilding, and Grand Design: Art of Sasanian Iran (224–642)*, exhibition catalogue, Asia Society, New York 2007; B. Goldman, 'The Later Pre-Islamic Riding Costume', *Iranica Antiqua*, 28 (1993), pp. 201–39, see illustrations *passim*; Widengren, 'Riding Costume', illustrations *passim*.

283. See Bravmann, "*An Yadin*". Bravmann therefore interprets *jizya* as the reward given by the captive to his generous captor; see also C. F. Robinson, 'Neck Sealing in Early Islam', *Journal of the Economic and Social History of the Orient*, 48 (2005), pp. 401–41, at pp. 409–10, 413–14, and n. 59.

284. Bravmann, "*An Yadin*", p. 311.

285. Abū Yūsuf, *Kitāb al-kharāj*, p. 127.

286. Ṭabarī, *Taʾrīkh*, vol. III, p. 1393: وان تاخذ عبيدهم واماؤهم ومن يلبس المناطق من تلك الطبقة بشدّ الزنانير والكساتيج مكان المناطق

287. Abū Yūsuf, *Kitāb al-kharāj*, p. 127.

288. This version is repeated by Ibn Qayyim al-Jawziyya, who adheres to the term *minṭaqa* when citing the edict. See above, chap. 3.

289. The usual form in Greek is *zōnē*, while *zōnarion* appears much more rarely. See 'zōnē' and 'zōnarion', in E. A. Sophocles, *Greek Lexicon of the Roman and Byzantine Periods (from BC 146 to AD 1100)*, Cambridge 1914, p. 558.

290. A. S. Tritton, 'Zunnār', *EI²*, vol. XI, pp. 571–2; Tritton, *The Caliphs*, p. 117; on the *zunnār* see also Noth, 'Abgrenzungsprobleme', pp. 304–5, trans. Muelhaeusler, pp. 13–15; Cohen, *Under Crescent and Cross*, pp. 62–3.

291. S. Shaked, 'No Talking during a Meal: Zoroastrian Themes in the Babylonian Talmud', in C. Bakhos and R. Shayegan, eds., *Talmud in its Iranian Context*: *Proceedings of the Conference Talmud in its Iranian Context*, Los Angeles, 6–7 May 2007, Tübingen 2010, pp. 1–21. See p. 5, n. 19, and additional references there.

292. Ibid., p. 6.

293. Ibid., p. 7.

294. Ibid., pp. 8–10, n. 31, and additional references there.

295. Babylonian Talmud, Shabbat 9b: ומאימתי התחלת אכילה? רב אמר: משיטול ידיו. ורבי חנינא אמר: משיתיר חגורה. ולא פליגי. הא-לן, והא- להו.

296. On the influence of the ritual use of the *kustīg* on the Jews in Mesopotamia see Elman, 'Middle Persian Culture', pp. 181–2.

297. See W. Eilers, 'Banda', *Encyclopedia Iranica*, vol. III, pp. 682–3; see also E. H. Peck, 'Belt ii: In the Parthian and Sasanian Period', *Encyclopedia Iranica*, vol. IV, pp. 132–6, who supports the distinction between the two types of belts through archaeological evidence.

298. See Zakeri, *Soldiers*, pp. 70–4; see G. Widengren, 'Le symbolisme de la ceinture', *Iranica Antiqua*, 3 (1968), pp. 133–55, at p. 141.

299. Widengren, 'Riding costume', pp. 254, 260; G. Widengren, 'Quelques rapports entre juifs et iraniens à l'époque des parthes', *Vetus Testamentum*, Supplements, 4, Leiden 1957, pp. 197–241, at pp. 227–8.

300. Huyse, *Kāba-i Zardušt*; see also chap. 1, n. 23.

301. Nathan ben Yehiʾel, *Aruch Completum*, ed. A. Kohut, Vienna 1930, vol. VII, p. 127 (Hebrew), cited by Herman, 'Exilarchate', p. 147, n. 651.

302. On another occasion it is reported that Yazdgird fixed Rabbi Huna bar Nathan's belt (*hamyānā*), a gesture which is interpreted to mean that he was highly regarded by the king: see Babylonian Talmud, Zevahim 19a. However, the word *kamar* is not used there. It may well be that the term *hamyānā* functioned both as a general term for belt and as a specific one

denoting the religious function, as is indicated in Babylonian Talmud, Shabbat 49b mentioned above, where a *kamar* and a *hamyānā* are both called *hamyāney*; see also Herman, 'Exilarchate', pp. 112–13, nn. 508–509 and additional references regarding *kamar* there (Hebrew); Shaked, 'No Talking', pp. 8–9.

303. Al-Balādhurī, *Buldān*, p. 502; al-Ṭabarī, *Taʾrīkh*, vol. II, pp. 1509–10.

304. A. Khazdan, 'Belt', in Khazdan *et al.*, eds., *The Oxford Dictionary of Byzantium*, vol. I, p. 280; J. Braun, *Die liturgische Gewandung im Occident und Orient*, Darmstadt 1964 pp. 115–17.

305. Linder, *Jews*, pp. 357–8 (text), 360–1 (trans.).

306. Kalfon-Stillman, *Arab Dress*, pp. 50–2. Hilāl al-Ṣābiʾ, *Rules*, p. 65: 'He was surrounded by a hundred of his private servants in good attire, with colored garments, belts, and swords with trappings studded with jewelry.'

307. Hilāl al-Ṣābiʾ, *Rules*, p. 63.

308. Ibid., p. 65. See also above, clause 7.

309. See Sourdel, 'Questions', p. 143: al-Ṭabarī, *Taʾrīkh*, vol. III, p. 1233; C. E. Bosworth, annot. and trans., *The History of al-Ṭabarī*, vol. V: *Storm and Stress along the Northern Frontiers of the ʿAbbāsid Caliphate*, Albany 1991, p. 92; see also Masʿūdī, *Murūj al-dhahab*, vol. IV, pp. 356–7.

310. Al-Ṭabarī, *Taʾrīkh*, vol. III, p. 1302; Bosworth, *Storm and Stress*, p. 178.

311. Xenophon, *Cyropaedia*, viii, 3.9.

312. See P. Sanders and A. K. S. Lambton, 'Mawākib', *EI²*, vol. VI, pp. 849–58; see nn. 148–51.

313. On this see chap. 2, nn. 64–5.

314. *Rāya* is an army flag or banner: see 'Rāya', in Lane, *Lexicon*.

315. Abū Yūsuf, *Kitāb al-kharāj*, p. 138.

316. See A. S. Shahbazi, 'Derafš', *Encyclopedia Iranica*, vol. VII, pp. 312–15; al-Thaʿālibī, *Ghurar*, pp. 38–9, describing how the Persian standard, which was conceived as a good omen during battle, was captured and cut into pieces by ʿUmar.

317. Ibn Khaldūn, *Muqaddima*, vol. II, p. 42; Ibn Khaldūn, *Muqaddimah*, trans. Rosenthal, vol. II, p. 48: 'One of the emblems of the royal authority is the "outfit" (*ālah*), that is the display of banners and flags and the beating of drums and the blowing of trumpets and horns.'

318. Sourdel, 'Questions', p. 144.

319. See P. Chalmeta and A. K. S. Lambton, 'Marāsim', *EI²*, vol. V, pp. 518–29; Christensen, *L'Iran*, pp. 210–12; Spüler, *Iran*, p. 348.

320. Hilāl al-Ṣābiʾ, *Rules*, p. 25.

321. Ibn Khaldūn notes that the caliphs granted their permission to certain officials who were accompanied by a procession carrying flags and other *āla*: see *Muqaddima*, vol. II, p. 44; *Muqaddimah*, trans. Rosenthal, vol. II, p. 50.

322. Hilāl al-Ṣābiʾ, *Rules*, p. 15.

323. Ibid., pp. 15–16.

324. Ibid., p. 16.

325. See Christensen, *L'Iran*, p. 131, and n. 8, citing M. K. Patkanian, 'Essai d'une histoire de la dynastie sassanides, d'après les renseignements fournis

par les historiens arméniens' *Journal Asiatique*, 1 (1866), pp. 101–238, see p. 112.

326. See Sourdel, 'Questions', p. 144; A. Metz, *The Renaissance of Islam*, trans. Salahuddin Khuda Bakhsh and D. S. Margoliouth, Patna 1937, pp. 133–4.

327. Hilāl al-Ṣābiʾ, *Rules*, p. 115.

328. Ibid.

329. See Chalmeta and Lambton, 'Marāsim'.

330. Ibn Khaldūn, *Muqaddima*, vol. II, p. 44; Ibn Khaldūn, *Muqaddimah*, trans. Rosenthal, vol. II, p. 50.

331. Levy-Rubin, *Continuatio*, pp. 251 (text), 104 (trans.).

332. Ibn al-Murajjā, *Faḍāʾil*, p. 56 carries an exceptional version: ولا نرفع أصواتنا في حضور المسلمين – 'we shall not raise our voices in the presence of Muslims', with no reference to church services or readings.

333. Xenophon, *Cyropaedia*, viii.1.29–34, trans. Miller, p. 321.

334. al-Masʿūdī, *Murūj al-dhahab*, vol. I, p. 219.

335. Pseudo-al-Jāḥiẓ, *Tāj*, pp. 117–18.

336. Hilāl al-Ṣābiʾ, *Rules*, p. 31.

337. Ibid., p. 64.

338. Al-Ghazālī, *al-Adab fī al-dīn*, Cairo 1976 p. 42.

339. The word that appears here in Samaritan script is clearly *fanīka*; I have not managed to discover its meaning.

340. Levy-Rubin, *Continuatio*, pp. 242 (text), 91 (trans.).

341. Ibid., p. 251 (text), p. 104 (trans.).

342. Boyce, trans., *Letter of Tansar*, pp. 48–9.

343. See Metz, *Renaissance*, pp. 391–2; A. S. Tritton, 'Muslim Funeral Customs', *Bulletin of the School of Oriental and African Studies*, 9 (1938), pp. 653–61; H. Algar, 'Burial', *Encyclopedia Iranica*, vol. IV, pp. 563–5, see p. 564.

344. Kister, 'Lā tashabbahū', pp. 321–53.

345. Pseudo-al-Jāḥiẓ, *Tāj*, pp. 132–3.

346. Kalfon-Stillman, *Arab Dress*, p. 126; ʿAlī b. Yūsuf al-Qifṭī, *Taʾrīkh al-Ḥukamāʾ*, ed. J. Lippert, Leipzig 1903, p. 104.

347. See Kalfon-Stillman, *Arab Dress*, p. 107. See there also the reference to Ibn ʿAbdūn, who says to the *muḥtasibūn* that 'no individual among the tax collectors, constables, Jews and Christians should be allowed to dress in the clothing of the nobility, nor that of a jurist, nor that of a person of good standing; rather, they should be abhorrent and shunned': ibid., pp. 107–8.

Glossary

adhān the call to prayer

ahl al-dhimma protected minorities under Muslim rule

ahl al-kitāb ('people of the book') fellow monotheists

'ahd (pl. 'uhūd) covenant

amān safety, protection, safe-conduct, an assurance of safety
   and security

amicitia (Lat.) friendship

amīr (pl. umarā') ruler; military commander

Amīr al-Mu'minīn ('Commander of the Faithful') the caliph

amṣār al-muslimīn cities founded by the Arabs after conquest

'anwatan conquest by force without a formal surrender agreement

'aqd covenant

asāwirā (Pers./Ar.) cavalry

baqṭ agreement of safety

bī'a synagogue/church

deditio (Lat.) conquest by surrender

dhimma assurance of protection

dhimmī member of a protected minority under Muslim rule

dihqān (Pers.) local notable in Sasanian Persia

fides (Lat.) honesty, confidence, good faith

foederati (Lat.) allies

foedus (Lat.; pl. *foedera*) treaty

ghiyār restrictions placed on non-Muslims to differentiate them from
   Muslims

ḥadd (pl. *ḥudūd*) Qur'anic punishment for certain crimes

ḥadīth tradition; saying of the Prophet and/or his Companions

ḥajj pilgrimage to Mecca

hamyānā belt worn by Jews in the Sasanian empire

homologia (Gk.) conquest by surrender; pact, agreement

imām prayer leader

imam ruler

'imāma (pl. *'amā'im*) turban

isnād chain of transmission

jiwār agreement of protection

jizya tax payable by non-Muslims

jund (pl. *ajnād*) administrative sub-district

kāfir infidel, non-Muslim

kanīsa synagogue/church

khilāf public differentiating signs between Muslims and non-Muslims

khuṭba Friday sermon

kitāb written compact

kitāb amān document listing the conditions that were agreed upon
    in a *ṣulḥ*

mahdī righteous leader who will rule before the end of the world

marzubān (also *marzbān/marzpan*; Pers./Ar.) senior officer in the
    Sasanian army; local Iranian official under Muslim rule

mawlā (pl. *mawālī*) client; non-Arab Muslim

meltā (Syr., 'word') honesty, confidence, good faith; agreement

meltā d-qyāmā (Syr., 'word of covenant') surrender agreement

metoikos (Gr.; pl. *metoikoi*) resident alien

minṭaqa (pl. *manāṭiq*) girdle

miṣr (pl. *amṣār*) fortified city

mushrikūn polytheists; non-Muslims

nāqūs (pl. *nawāqīs*) the clapper or gong used in the East for the
    purpose of calling to prayer

pactio/pactum (Lat.; *pakton* (pl. *pakta*), Gr.) pact, agreement

pistis (Gr.; pl. *ta pista*) honesty, confidence, good faith; guarantee

qabā' (Pers. *kapāh*) luxurious robe

qāḍī judge

Rāshidūn the four Rightly Guided Caliphs

sharī'a Islamic law

shirk polytheism

sīra biography

spābadh general in the Sasanian army

ṣulḥ surrender agreement

ṣulḥan conquest through surrender, conquered by means of a *ṣulḥ*

sunna customs based on the practice of the Prophet
ṭabaqa ('stratum') social class; non-Muslims
tafsīr Qurʾanic exegesis
ṭirāz an embroidered border on a garment
walī (pl. *awliyāʾ*) government official; holy man, mystic
wazīr vizier
zunnār (pl. *zanānīr*) girdle, belt

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